PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1857

VOL. III

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ERRATA.

Column	167.	Omit the 16th line from the bottom.
,,	240.	For the heading "*Bombay University*" read "*Madras University.*"
,,	256.	After line 13, read as follows: "The Council having resumed its sitting, the Bill was reported."
,,	323.	Line 25 from the bottom. Omit the word "*Town.*"
,,	508.	Line 23 after the word "*adopted,*" read "*and communicated to the Government of Bombay*"

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA.

Saturday, January 3, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	D. Eliott, Esq.,
Hon. Major Genl. J. Low,	C. Allen, Esq.,
Hon. J. P. Grant,	P. W. LeGeyt, Esq.,
Hon. B. Peacock,	E. Currie, Esq., and
	Hon. Sir A. W. Buller.

HINDOO POLYGAMY.

THE CLERK presented a Petition of Inhabitants of Sheokhola in Hooghly, praying for the abolition of Hindoo Polygamy.

MR. GRANT moved that the Petition be printed.

Agreed to.

NAWAB OF THE CARNATIC.

THE CLERK presented a Petition of Soojan Mool Lallah, Soucar, describing himself as a creditor of the Estate of Enayut Begum (deceased), mother of the late Soubadhar Nawab of the Carnatic, praying for a Law to provide for the fair liquidation of claims, which, according to the custom of Mahommedans, might be found to be a legal charge against the Estate of the late Nawab.

Also a Petition of Govindur Doss, Soucar, describing himself as a creditor of the Estate of the late Nawab of the Carnatic, praying that provision might be made by Law for the due administration of the Estate.

MR. ELIOTT moved that these Petitions be printed and referred to the Select Committee on the Bill "for repealing Act I of 1844."

Agreed to.

LAND CUSTOMS (BOMBAY PRESIDENCY.)

MR. LEGEYT presented the Report of the Select Committee on the Bill "to make better provision for the collection of Land Customs on certain Foreign Frontiers of the Presidency of Bombay."

DUTIES ON TOBACCO (BOMBAY.)

Also, the Report of the Select Committee on the Bill "to amend the Law relating to the duties payable on Tobacco, and the retail sale and warehousing thereof in the Town of Bombay."

CALCUTTA UNIVERSITY.

THE CHIEF JUSTICE said, he had been honored by the Government of India with a request that he should introduce and take charge of a Bill "to establish and incorporate an University at Calcutta."

The scheme of a University in this City was by no means a modern one. He recollected that, when he landed in India some eleven years ago, he found that a scheme, complete in nearly all its parts, had been propounded by Mr. Charles Cameron, an able and zealous friend—throughout his Indian career, and since the close of that career, in England—of Native Education, for the

establishment of a University in Calcutta. When he spoke of Mr. Cameron, he would of course be understood to include, as acting with him, the other gentlemen who constituted at that time the body known as the Council of Education. That scheme had been submitted to the then Government of India, which, he believed, approved of it, but referred it to the Honorable the Court of Directors for their sanction. The Court of Directors thought that, whatever might be its intrinsic merits, the adoption of it at that time would be premature—that the country was not yet ripe for an institution of that kind; and the scheme was accordingly laid aside. He did not quarrel with that decision of the Honorable Court. No one who had watched the progress of education in India during the last eleven years, more especially in this part of India, could come to the conclusion that the decision had materially tended to check that progress. The demand for English schools had constantly increased: new Colleges had sprung up: and the Hindu College had been opened to all classes, and placed on a wider basis, including many Professorships which it had not possessed before. On the other hand, it appeared to him that there was, at the present moment, a much better chance than there was in 1845 that the University which was about to be established would take that place among other Institutions of a similar character which all of us were desirous that it should take. In establishing such Institutions, we must always remember that we might go too fast—that we might force them upon communities not yet ripe for them;—and if we did that, we should run the risk of checking, rather than increasing, their development, just as we should check the free action of a child by stifling it in the garments of a man. His own opinion—which, however, might be of little importance when weighed against the opinion of Mr. Cameron—was that, eleven years ago, Calcutta was not ripe for a University. But in saying that, he felt bound emphatically to acknowledge that the merit of the conception of the Institution at the birth of which, after eleven years' gestation, he was now assisting, belonged to Mr. Cameron and his then colleagues in the Council of Education.

The Chief Justice.

The scheme, having been referred to the Court of Directors, slept until 1854. It was revived by the well-known Despatch of the Court on the subject of Education, dated the 19th of July 1854. That Despatch contemplated three principal objects. The Council must be aware that this country had long possessed educational establishments of different kinds. There were Government establishments; there were establishments which those zealous and earnest men, who had come to this country principally with the object of preaching the Gospel and acting as Missionaries, had very wisely engrafted on their original scheme—institutions in which a general education was given to Natives, in most cases without any attempt at proselytizing, but in which a certain amount of religious instruction was given, and in which in particular the Bible was used as a class-book; there were also other institutions which owed their origin either to the benevolence of living persons or to private enterprise; and there were institutions, like the Martiniére, which derived their existence from the posthumous liberality of testators. The Despatch of 1854, finding this state of things, had treated the whole subject of education in India, and had dealt more or less with all these different classes of institutions.

Its first object—an object which he had long desired to see effected—was, considering the great expansion of the Government system, to remove the conduct of the Government Institutions from the Council of Education, and to constitute, in the place of that body, a regular Department with a responsible officer of Government at its head.

The second object was to connect Government with the private Institutions to which he had referred, by contributing towards their support from the public funds by means of what were termed grants-in-aid,—leaving them, however, independent of the control of Government, except in the exercise of the right to see that the money which Government granted was properly and efficiently applied.

The third object was the object to which the Bill which he now introduced was intended to give effect—namely, to found a University which should open a

field for free and generous competition between all the different Educational Institutions, whether founded by Government, or aided by Government, or standing altogether on an independent basis, and exclusively supported by their own funds. The desire to bring the pupils of private Institutions into competition with pupils of the Government Institutions, had long existed. The proposition had been several times before the Council of Education, and the Council had always been anxious to meet the wishes entertained on the subject; but under the old system, it was found impracticable to devise a mode of examination which should carry on, as the Council wished to carry on, the course of Education adopted in the Government Institutions, and at the same time enable the pupils of Institutions where a different system obtained to compete on equal terms, or what they considered terms of equality, with those of Government Colleges. The University, however, which rested on a much larger basis, would of course afford far better means for a purpose of that kind. It was due to Mr. Cameron to say that his scheme likewise contemplated competition between pupils of the private, and pupils of the Government Institutions; but it contained the defect which was hit by the Despatch of the Honorable Court in 1854,—namely, that the organisation of the University which it proposed, was on far too narrow a basis. The Senate of the University according to that scheme, was to consist of certain high functionaries, and of the Members of the Council of Education for the time being—of those, therefore, who would either have some other official duties to perform, or who, as Members of the Council of Education, would be more or less connected with the Government system of Education. The scheme propounded in the Despatch and embodied in this Bill, was far wider and more catholic. It was impossible for any one to read the names of those who were to be the first Members of the new Corporation, and, as such, the Senate of the University, without seeing that the Government had evinced the most liberal spirit possible in selecting a body which would fairly represent the private Institutions, and even the different shades of opinion which the conductors of those Institutions might be supposed to hold. There was the name of the Reverend and learned Principal of Bishop's College, who would represent the Church of England, and the Institutions in connection with it; there was a name which would certainly live as long as, probably longer than, any other to be found in the list, as that of one who had labored earnestly for the advancement of Native Education in this country—the name, he meant, of Dr. Duff, who would represent the Free Church of Scotland. The list also included representatives of the Established Church of Scotland, of the Roman Catholic Church, and of several dissenting bodies; and he, therefore, repeated that no one could reasonably desire a constitution on a wider or more catholic basis, or one which would more fairly represent the various institutions which could be properly affiliated to the new University.

Upon the receipt of the Despatch of the Court of Directors, the late Governor General appointed a Committee constituted very much as the proposed Senate of the University was constituted by this Bill. The functions of that Committee were to draw up rules which might hereafter be adopted by the Senate, and also to report generally on the best mode of giving effect to the suggestions of the Court of Directors. The Committee had divided themselves into several Sections. One Section undertook to frame rules for examinations for the grant of Degrees in the Faculty of Arts: another undertook to frame rules for examinations for the grant of Degrees in the Faculty of Law: another undertook the Department of Medicine: and a fourth, the new Department of Civil Engineering. The Sub-Committees made their Reports to the general body of the Committee. Those Reports had been sent to the Governments of the other Presidencies and of the North-Western Provinces, with a view to elicit their opinions. Upon the receipt of those opinions, all the Reports of the Sub-Committees had been revised, and, on their adoption by the general Committee, a Report had been submitted by that body to Government. The whole subject had since been under the consideration of the Government of India, and the results at which they had arrived had been embodied in the Resolution

published a fortnight ago, and dated December, 1856.

It was not necessary for him in that place to consider the different courses of study proposed by the Committee. The functions of the Council were to do that which the Committee had not felt competent to do;—namely, in general accordance with the sense of the Resolution of the Government of India, to frame a legal constitution for the University.

The Government had determined, for the most part, to retain the same titles of honor which, as degrees, were familiarly known in Europe. In the Faculty of Arts, the Degrees which the Committee proposed to confer were "Bachelor of Arts" and "Master of Arts." There was one novelty in the plan they proposed—for it was a deviation from the system observed even in the University of London, which was taken generally as the model for the Indian Universities. It was, that the Degree of Master of Arts was proposed to be conferred on those who should take honors in the Honor Exammations, which were to succeed the ordinary examinations for a Degree in Arts. The same Degree was, however, made obtainable by students who should go through the Honor Examination at some later period. The only distinction would be, that those who came up at a later period would merely obtain the Degree of Master of Arts, and not those honors which they would have gained if they had passed their examination earlier.

With respect to the Faculty of Law, from which he anticipated great advantages to the Community, in supplying to the Provincial Courts a higher class of Pleaders, and in putting upon the Benches of the subordinate Courts a more scientifically-educated class of Judges, the Committee proposed to have but one Degree. They proposed that it should be essential to a Degree in Law that the candidate should first have taken a Degree in Arts. He thought that this was necessary, to secure an object which was most desirable—that the University should send out clothed with Degrees in Law not mere Lawyers, but men well grounded in general knowledge, and possessing the inestimable advantages of a liberal education.

The Committee had adopted the same rule with respect to the Faculty of Civil Engineering. The Degree which they proposed to confer in that Faculty was "Master of Civil Engineering;" and they had determined that no person should take that Degree until he should first have taken a Degree in Arts.

The Committee did not propose to adopt precisely the same rule with regard to the Faculty of Medicine. They were extremely unwilling to interfere with the system which they found established in one of the most flourishing and successful Institutions in India—the Medical College of Calcutta; and had determined, wisely as he thought, to leave undisturbed the system which they found working there, and working well. The scheme contemplated two Degrees in Medicine—the Degree of Licentiate in Medicine, which might be gained after a certain period of study in the Medical College, and to which a Degree in Arts would not be necessary; and the Degree of Doctor of Medicine, to which a Degree in Arts would be necessary.

He would now advert generally, though not in detail, to the provisions of the Bill.

The Bill began with the usual clauses constituting the Body which was to form the University a Body corporate, with the usual powers of a Corporation. It then provided that the University and the Senate of the University should consist of a Chancellor, a Vice-Chancellor, and certain Fellows. The Chancellor was always to be the Governor-General of India for the time being. The Vice-Chancellor was to be appointed by the Governor-General in Council. But it was thought, and, in his judgment, very properly, that it was desirable that there should be a frequent change in that office; and, accordingly, the Bill provided that the Vice-Chancellor should be appointed for a term of two years only; but it gave the Governor-General in Council power, whenever a vacancy should occur in the office by effluxion of time, to reappoint the ex-Vice-Chancellor for a further period of two years. The Fellows would be partly ex-officio, and partly men appointed for the time being by the Governor-General in Council. The ex-officio Fellows were de-

cared by the Bill to be the two Lieutenant Governors, the Chief Justice of Bengal, the Bishop of Calcutta, and the Members of the Supreme Council, all for the time being.

The subsequent Sections of the Bill provided merely for the functions of the Senate, to whom it gave very considerable latitude in the way of framing bye-laws, which, when approved by the Governor-General in Council, would guide them in their future proceedings. It would be very inconvenient to fetter the Senate in this respect by unnecessary restrictions; because in such an Institution, there would probably be frequent changes in the rules by which it was governed; and it would be highly inexpedient to render it necessary to apply to the Legislature whenever such a change was required. It could not be denied by those who read the Bill that, though the circumstances of this country might, in time to come, so alter as to make it necessary to place the University on another basis, still, while those circumstances continued to be much the same that they were now, the University might be carried on for many years without any further appeal to the Legislature; for, by virtue of the powers which the Bill gave to the Senate to frame bye-laws, all the means were secured which were necessary to the future development of the Institution.

The Bill next provided the mode in which the Senate were to act. It provided that they should appoint Examiners for the examination of Candidates for Degrees; and that the examinations should be held in a particular way. It gave the Senate power to grant Degrees, and to raise certain fees as incident to the grant of those Degrees; and it required them to submit the accounts of the University once every year to the Governor-General in Council.

The Visitatorial power was vested in the Governor-General in Council.

The Governor-General in Council would also have the power of nominating the Fellows; and, so far, the University would be closely connected with the Government. But within itself, the University would have all the freedom of action which it was, at present, desirable that it should have. It would have full power to frame bye-laws for itself, subject only to the condition that the bye-laws should be approved by the Governor-General in Council. That approval would be necessary, because the intention was to establish Universities in other parts of India and it was desirable that the course of education in all should be kept as uniform as it could be consistently with the circumstances of the different Presidencies.

These were the principal provisions of the Bill, and its principal objects. He need hardly say that he felt peculiar satisfaction in laying the Bill on the table of the Council, when he considered that, during the many years he had been in India, he had always been more or less connected with the conduct of Native Education as a Member of the Old Council of Education—a period during which his services, though he feared they had been of little value, had always been readily and cheerfully given. But he could not sit down without expressing that which he was satisfied must be the feeling of every Member of the Council, that, however sound and liberal might be the principles upon which the Institution about to be formed should be organised, its ultimate success must rest, not with the Council or the Government, but with the people of the country. The husbandman might prepare the soil, and sow the seed; but on the nature and fertility of that soil must depend the harvest;—and if this University was to take the place which it was hoped it would take among other Institutions of the same kind, its graduates must remember that their functions did not cease when they had passed the examinations necessary for obtaining Degrees or even honors accompanying those Degrees, but that it was their duty to uphold the character of the Institution by shewing, when they went forth into the field of active labour, to what end they had obtained their honors. Those who should gain honors in Literature, must continue to cultivate those tastes and habits which they would acquire at College: those who should gain honors in Science, must, as far as their opportunities would allow them, either prosecute their enquiries in the field of speculative Science, or apply

scientific principles to the material world around them. Those who should gain honors and diplomas in the special Faculty of Law or of Medicine, must not avail themselves of them as the mere means of earning a livelihood, but must employ the talents which God had given them under the sense of the responsibility which lay upon them to make the knowledge subservient to the glory of God and the good of their follow-men. If the graduates did this, then, considering the extreme aptitude of the Native mind for acquiring knowledge—considering, also, that the progress of social improvement would, he trusted, year after year diminish those peculiarities of an oriental life which were so apt to destroy in the man the promise of his youth, he saw no reason why we should not look hopefully to the future of this University. But however that might be, the future was in the hands of God. The Council could but do their best to lay the foundation of the Institution, the full development of which they none of them would live to see.

The Bill was read a first time.

INDIAN PENAL CODE.

MR. PEACOCK said he should have mentioned, when he moved the first reading of the Indian Penal Code, that a Bill was in preparation for repealing all the Acts and Regulations which would be superseded by the Code, and that he had not thought it necessary to delay the introduction of the Code until that Bill was ready. He hoped to be able to bring in the Bill very shortly, and he should now move the second reading of the Code.

The motion was carried, and the Code read a second time.

SONTHAL DISTRICTS.

MR. CURRIE moved the second reading of the Bill "to amend Act XXXVII of 1855" (to remove from the operation of the General Laws and Regulations certain Districts inhabited by Sonthals and others, and to place the same under the superintendence of an Officer to be specially appointed for that purpose.)

The motion was carried, and the Bill read a second time.

The Chief Justice.

NATIVE PASSENGER VESSELS (BAY OF BENGAL.)

MR ELIOTT moved that the Council resolve itself into a Committee on the Bill "to prevent the over-crowding of vessels carrying Native Passengers in the Bay of Bengal;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

The Bill passed through Committee with some verbal amendments, and, on the Council resuming its sitting, was reported.

NOTICE OF MOTION.

THE CHIEF JUSTICE gave notice that, on Saturday next, he would move the second reading of the Bill to "establish and incorporate an University at Calcutta." In doing so, he said it was a great object to carry the Bill through the Council as speedily as possible; but he would not yet give notice of a motion for the suspension of the Standing Orders in respect of it. He would consider the expediency of taking that course before the next Meeting of the Council, and it was probable that he would that day give notice of a motion for the suspension of the Standing Orders. This did not appear to him to be a Bill which required to be published for any length of time. The principles upon which the University was to be founded, had been determined by the Government, and the details did not seem to call for any expression of public opinion. At all events, the Bill would be for some time before the public prior to being passed.

LANDS FOR PUBLIC WORKS.

MR. LEGEYT moved that a communication which he had received from the Government of Bombay, should be laid on the table, and referred to the Select Committee on the Bill "for the acquisition of land for public purposes."

Agreed to.

SONTHAL DISTRICTS.

MR. CURRIE moved that the Bill "to amend Act XXXVII of 1855" be

referred to a Select Committee consisting of Mr. Peacock, Mr. Eliott, and the Mover.

Agreed to.

NOTICE OF MOTION.

MR. ELIOTT gave notice that, on Saturday next, he would move the third reading of the Bill "to prevent the over-crowding of vessels carrying Native Passengers in the Bay of Bengal."

The Council adjourned.

Saturday, January 10, 1857.

PRESENT:

The Honorable J. A Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	C. Allen, Esq.
Hon. Mj. Genl. J. Low,	P. W. LeGeyt, Esq.
Hon. J. P. Grant,	E. Currie, Esq.
Hon. B. Peacock,	and
D. Eliott, Esq.	Hon. Sir A. W. Buller.

JOINT-STOCK COMPANIES.

THE CLERK presented a Petition from the Central Committee of the Indigo Planters' Association, relative to the Bill "for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the members thereof." The Petitioners prayed that it might be enacted by the Bill that the winding-up of insolvent Joint-Stock Companies should be, as under the present Law, by Her Majesty's Supreme Courts exclusively.

MR. PEACOCK moved that the Petition be printed and referred to the Select Committee on the Bill.

Agreed to.

SONTHAL DISTRICTS.

THE CLERK presented a Petition of certain Zemindars of Bhaugulpore (received by transfer from the Officiating Under Secy. to the Govt. of India in the Home Dept) complaining of inconveniences and hardships to which they were exposed in consequence of their zemindarries having been included in the Act XXXVII of 1855, relating to the Sonthal districts.

MR. CURRIE moved that the Petition be referred to the Select Committee on the Bill "to amend Act XXXVII of 1855."

Agreed to.

HINDOO POLYGAMY.

THE CLERK presented a Petition from Hindoo Inhabitants of Bengal, praying for the abolition of Hindoo Polygamy.

MR GRANT moved that the Petition be printed.

Agreed to.

CALCUTTA UNIVERSITY.

THE CHIEF JUSTICE moved the second reading of the Bill to "establish and incorporate an University at Calcutta."

The motion was carried, and the Bill read a second time.

NATIVE PASSENGER VESSELS (BAY OF BENGAL.)

MR. ELLIOT moved that the Bill "to prevent the overcrowding of Vessels carrying Native Passengers in the Bay of Bengal" be read a third time and passed.

The motion was carried, and the Bill read a third time and passed.

CALCUTTA UNIVERSITY.

THE CHIEF JUSTICE moved that the Standing Orders be suspended in regard to the Bill "to establish and incorporate an University at Calcutta," in order that he might appoint a Select Committee with instructions to report upon it on Saturday next, on which occasion he proposed to move that it be carried through its remaining stages. Under the Standing Orders, the Report of the Committee could not be presented before two months from the date of their appointment; and the regular course, therefore, was to move that they be suspended.

The motion was seconded by Mr. Grant, and carried.

THE CHIEF JUSTICE then moved that the Bill be referred to a Select committee, consisting of Mr. Grant, Mr. Peacock, Mr. Eliott, Mr. LeGeyt, and the Mover.

Agreed to.

IMPRISONMENT OF CRIMINALS (STRAITS SETTLEMENT.)

THE CHIEF JUSTICE said, he had a motion to make regarding the Bill "relating to the imprisonment of Criminals in the Settlement of Prince of Wales' Island, Singapore, and Malacca," which he had introduced a short time ago at the suggestion of the learned Recorder of Singapore, but which that officer, on a further consideration of the Charter under which he acted, had come to the conclusion (and he, the Chief Justice, thought correctly) was not required. The Bill had been referred to a Select Committee; and the motion which he had to make was, that that Committee be discharged, and that he be at liberty to withdraw the Bill.

Agreed to.

NATIVE PASSENGER VESSELS (BAY OF BENGAL.)

MR. ELIOTT moved that Mr. Peacock be requested to take the Bill "to prevent the over-crowding of Vessels carrying Native Passengers in the Bay of Bengal" to the Governor General for his assent.

Agreed to.

INDIAN PENAL CODE.

MR. PEACOCK moved that the Indian Penal Code be referred to a Select Committee consisting of the Chief Justice, Mr. Grant, Mr. Eliott, Sir Arthur Buller, and the Mover.

Agreed to.

NOTICE OF MOTION.

MR. CURRIE gave notice that he would, on Saturday next, move for a Committee of the whole Council on the Bill "relating to Trespasses by Cattle."

The Council adjourned.

Saturday, January 17, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice.	D. Eliott, Esq.
Hon. Major Gen. J. Low,	C. Allen, Esq.
	P. W. LeGeyt, Esq.,
Hon. J. P. Grant,	E. Currie, Esq., and
Hon. B. Peacock.	Hon. Sir A. W. Buller.

BOMBAY MUNICIPAL TAXES.

THE CLERK presented a Petition from Justices of the Peace, Merchants, and others, Inhabitants of Bombay, against so much of a Bill "to amend and consolidate the Laws relating to the Municipal Taxes in the Islands of Bombay and Colaba" (about to be laid before the Council) as relates to the levy of town dues on goods in transitu, and on the shipping in the harbor.

MR. LEGEYT moved that the Petition be printed.

Agreed to.

JOINT-STOCK COMPANIES.

THE CLERK presented a Petition from the Bengal Chamber of Commerce praying that the Bill "for the Incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the members thereof," might be so amended that the winding-up of Insolvent Joint-Stock Companies might be entrusted solely to Her Majesty's Supreme Courts.

MR. PEACOCK moved that the Petition be printed and referred to the Select Committee on the Bill.

Agreed to.

HINDOO POLYGAMY.

THE CLERK presented a Petition of Hindoo Inhabitants of Bora praying for the abolition of Hindoo Polygamy.

THE CHIEF JUSTICE moved that the Petition be printed.

Agreed to.

APPELLATE JURISDICTION OF PRINCIPAL SUDDER AMEENS (BOMBAY.)

THE CLERK reported that he had received a communication from the Secretary to the Government of India in the Home Department forwarding, with remarks, for consideration in connection with the new Law of Procedure, copies of papers on the subject of extending the appellate Jurisdiction of Principal Sudder Ameens in Bombay.

CALCUTTA UNIVERSITY.

THE CHIEF JUSTICE presented the Report of the Select Committee on the Bill "to establish and incorporate an University at Calcutta."

MUNICIPAL ASSESSMENT (SUBURBS OF CALCUTTA AND HOWRAH.)

MR. CURRIE moved the first reading of a Bill "for raising funds for making and repairing roads in the suburbs of Calcutta and the station of Howrah."

In doing so, he said when he had prepared the Bill for levying rates and taxes in the town of Calcutta, he had introduced into it provisions which would have rendered liable to the horse and carriage tax for Calcutta, all horses and carriages kept in the suburbs which might be brought upon the town roads. But before that Bill came under the consideration of the Select Committee, he was made aware that the Government had declared that it would no longer sanction any expenditure from the general revenues for the maintenance of the roads of the suburbs; and that the expense of maintaining those roads must be provided from local funds. Under these circumstances, as it appeared that the residents of the suburbs would have to pay for the repairs of their own roads, it seemed clear that they ought not to be called upon to contribute towards the expense of repairing the roads of the town; and, accordingly, in Select Committee, he had procured that the provisions which would have made them liable to such payment should be struck out of the Bill, with the understanding that he would introduce a separate Bill for levying a similar tax on horses and carriages kept in the suburbs.

It was hoped that the town horse and carriage tax would produce an amount about equal to the expense incurred by the Municipal Commissioners in repairing the town roads. But as the population of the suburbs was more scattered, and the houses of persons keeping horses and carriages were few and far between, it was not to be supposed that a horse and carriage tax, levied in the suburbs at the town rates, would yield an amount nearly sufficient to defray the expenses of the annual repair of the suburban roads.

Considering how very far short of the amount required the produce of a tax of that kind would fall, he had himself, at one time, been inclined to think that the requisite funds might be best raised by tolls taken at the canal bridges. But the Supreme Government had expressed a decided opinion against such a course; and a similar objection had, if he remembered rightly, been taken in this Council when the Report of the Select Committee on the Gas Bill was under discussion. It was also to be admitted that there would be some practical difficulty in carrying out such a scheme. It would leave open the whole of the south-east quarter of the suburbs, from the Balliaghatta Canal to the General Hospital, including all Intally and Ballygunge, which were amongst the most populous parts of the suburbs; and the Inhabitants of that quarter would be altogether exempt from taxation, while the tax would fall very heavily upon such of the Inhabitants of Garden Reach, Allipore, and Cossipore as were obliged to pass the bridges into town daily.

On the whole, therefore, it had seemed advisable to extend to the suburbs the provisions for a horse and carriage tax which had been proposed, and had since been passed, for the Town. But as the proceeds of that tax would certainly not be sufficient for the whole expense of repairing the roads, the question remained how the difference was to be supplied.

There were some Ferries within the limits of the suburbs; and, although the proceeds of those Ferries were not large, it was, he thought, but fair that some share of the receipts of the Ferry Fund should be assigned for the improvement of those roads which not only conduced to the convenience of the Inhabitants of the suburbs, but also assisted in conveying the general traffic of the country and of the town. The amount of this assignment, however, must be left to the discretion of the Executive Government. Under any circumstances, it would not be sufficient to make up the deficit. The expense of repairing the roads within suburban limits on this side the river and exclusive of Howrah would, he calculated, be about Rs. 50,000 a year. He had no means of knowing at present what a horse and carriage tax in the suburbs might yield; but he should be surprised if it produced one-half that amount. It was quite clear that, if the whole expense of repairing the roads of the suburbs was to be borne by the Inhabitants of the suburbs, some other tax must be im-

posed; and the most appropriate one, and that which would be collected with the least harassment to the payers, would be an addition to the assessment to be levied upon occupiers of houses under the new Chowkeydaree Act. Accordingly, he had introduced into the Bill a provision to the effect that an estimate should be made annually of the expenses likely to be incurred during the year for the repair of the suburban roads, and also of the expected produce of the horse and carriage-tax, with such other sums as might be assigned by the Government from the Ferry Fund, or any other public fund; and that the excess of proposed expense over expected income should be added to the amount to be raised under the Chowkedaree Act, and be assessed and recovered under the provisions of that Act, and by the same agency.

The Bill provided that the expense of repairing only those roads which might properly be called suburban roads should be paid from the fund to be established under this Bill. Thus, it excluded those parts of the Barrackpore and Dum Dum Military roads which lie within the limits of the suburbs; and such parts of the Diamond Harbour, Budge-Budge and Culpee roads, within the same limits, as are not required for communication between one part of the suburbs and another.

It also excluded another class of roads, which, though situated entirely within the limits of the suburbs, were not designed for the benefit of the Inhabitants of the suburbs. He alluded to the Balliaghatta and other roads by which the produce of the interior of the country was carried into town from the canals. The traffic which passed along some of these roads was enormous, and the expense of repairing them was proportionately heavy. As the goods carried along these roads, and for the conveyance of which they were mainly designed, had already paid toll on the canals, it was but reasonable that the expense of repairing them should be paid out of the surplus Canal Funds. There was no express provision for this in the Bill. The maintenance of the roads was left to the Government, which might, if it thought fit, apply to the purpose a portion of the surplus tolls at its disposal.

The Bill included the Station of Howrah as well as the suburbs on this side of the river. Although Howrah was separated from Calcutta by the river, it was, to all intents and purposes, a suburb of the City, and a suburb increasing daily in importance and population; and any measure designed for the suburbs of Calcutta ought to have effect in Howrah.

The Bill was read a first time.

CIVIL PROCEDURE (BENGAL.)

MR. PEACOCK moved the first reading of a Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bengal." He said, it had lately been resolved by the Governor General in Council that the First Report of Her Majesty's Law Commissioners, together with the communications received from the Lieutenant-Governor of Bengal and from other persons regarding it, should be laid before the Legislative Council in order to the enactment of a Law in general accordance with the Procedure recommended by the Commissioners. The Council had had before them that Report and those communications. In addition to them, a communication had been received from the Government of Madras containing the observations of the Members of that Government and of the Judges of the Sudder Court of that Presidency; and he believed, though he had not yet seen it, that a similar communication had also been received from the Government of Bombay. He now proposed to bring in a Bill for reforming the Civil Procedure in the Presidency of Bengal.

The Council was aware that the Commissioners had recommended that the Sudder Courts and Her Majesty's Supreme Courts should be amalgamated. But under the Statute 3 and 4 of William IV. c. 85, s. 46, this Council had no power, without the sanction of the Honorable Court of Directors, to abolish any Court which existed by virtue of a Charter from the Crown. The Council had received no authority from the Court of Directors to abolish the Supreme Courts; and, therefore, it was impracticable, at present, to effect the amalgamation recommended. He had accordingly excepted that question from his Bill, leaving the consideration of it

either for the Imperial Parliament, or for this Council if authority should come out for that purpose. The necessity for so doing would not prevent the Council from dealing with the other parts of the Report of the Commissioners which related to Procedure.

He might have inserted in the Bill clauses relating to the Procedure of the Supreme Court; but, after consulting the Honorable and learned Chief Justice, he had thought it better to reserve the Procedure of the Supreme Court for a separate Bill, to be introduced on a future occasion. The present Bill, consequently, had been framed so as to leave the question of amalgamation in abeyance, and it was confined to the Courts of the East India Company.

In the Code of Procedure which they had recommended for Agra, the Commissioners had proposed that there should be one Judge appointed by the Crown in the Sudder Court. But he apprehended that they had made that proposal on the supposition that their Report would be carried out to the full extent, and that the Queen's and the Company's Courts would be amalgamated. If it should be necessary, in case the Courts were not amalgamated, to appoint a Crown Judge at the Sudder Court in Agra, he conceived it would be equally necessary to appoint one or more Crown Judges at the Sudder Court in Bengal and in the other Presidencies. But of course that would be attended with considerable expense; and the Council would hardly be justified in making such an appointment at Agra necessary if it was not prepared also to make a similar provision for Bengal and the other Presidencies. It had appeared to him, therefore, that this question must remain in abeyance; and, accordingly, he had not altered the jurisdiction of the Sudder Courts, but had applied himself to the Procedure of the Civil Courts of original jurisdiction. He had made no alteration in the scheme of procedure proposed by the Commissioners, except so far as became necessary in consequence of the omission of the clauses relating to the amalgamation of the Supreme and Sudder Courts, and a few verbal amendments. To that extent, he had altered their scheme, and to that extent only.

There was one point, however, in the introductory portion of the proposed Code in which he had made a material alteration. The Commissioners had recommended that the Stamp duties should be abolished, and that fees should be substituted for them. After mature consideration, the Government of India had come to the conclusion that financial considerations rendered it at present impossible to sacrifice the large amount of Revenue derived from Stamps; and, in consequence of that Resolution, he had omitted the portion of the Code which related to this subject. If it should be ultimately found that the Stamp duties could be abolished altogether, or be reduced, the abolition or reduction would not in any way affect the Procedure recommended, but might be effected on a revision and consolidation of the Stamp Laws.

The Scheme proposed by the Commissioners, and adopted in the Bill, provided for the appointment of three classes of Judges—Zillah Judges, Principal Sudder Ameens, and Moonsiffs. Moonsiffs would have jurisdiction to the extent of Rs. 2,500; Principal Sudder Ameens would have jurisdiction in all cases above that amount; and Zillah Judges would have a concurrent original jurisdiction with that of the Principal Sudder Ameens in regard to all suits above Rs. 2,500, with power to receive and determine suits within the pecuniary limitation assigned to Moonsiffs; or to direct the transfer of any suit from any Court to another Court of equal or superior jurisdiction in his district. The Commissioners had proposed (and he thought wisely) to abolish altogether the office of Sudder Ameen, and to vest in Principal Sudder Ameens the powers of Zillah Moonsiffs.

It was unnecessary to point out the details of the Procedure which the Commissioners recommended in the Second Chapter of their Code from the commencement of a suit to the final decree. It appeared to him that, on the whole, it would very much simplify the Procedure which now obtained. He did not mean to say that he coincided with the recommendations of the Commissioners in every particular; but he had thought it best, considering the care which had been bestowed on this Code, to publish it to the world in the

form in which it had been proposed, and wait for communications regarding it from those whose practical experience would enable them to give opinions and to make many valuable suggestions upon the subjects which it embraced; and he had no doubt that opinions and suggestions would be elicited from all the local Governments, the Judges of the Sudder Courts, the Zillah Judges, the Principal Sudder Ameens, and the Moonsiffs. After the Select Committee should have considered those communications, and reported upon them, the Council would be in a position to introduce such alterations as it might think proper. He made these remarks lest it should be supposed that, in introducing the Bill without alterations, he had been inattentive to the communications and suggestions which had already been received. There were some very excellent remarks in the communications received from the Government of Madras and the Judges of the Sudder Court in that Presidency. But he thought it would be better for the Council to let the Code go forth to the Public in the form in which it had been proposed by the Commissioners at home, in order that it might elicit the opinions and suggestions of all persons competent to advise upon the subject; and consequently, he had made no substantial alterations in it.

The Code would effect various improvements in the present mode of Procedure. It would enable the Civil Courts to grant injunctions to restrain a Defendant from committing waste, injury, or breach of contract; and also to appoint receivers or managers for the preservation or the better management or custody of property in dispute. It also provided that the parties to a suit, where they were at issue on some question of Law or fact, might state a case to the Judge in the form of an issue, and agree amongst themselves in writing to abide by the finding of the Judge upon such issue; in which case, the finding should be enforced in the same way as if it were a judgment pronounced in a contested suit. This was in accordance with the procedure which had, for some time past, obtained in England. It dispensed with the necessity of going through all the tedious and technical forms of pleading; and its introduction into this country would be highly beneficial in enabling suitors to avoid litigation, delay, and expense.

He should also mention that the appellate jurisdiction of Principal Sudder Ameens and special appeals had been done away with. In cases relating to land or other real property, and in many other cases which were specified, which involved questions of Law or fact of considerable difficulty, an appeal would lie from the decisions of the Zillah Judge, the Principal Sudder Ameen, and the Moonsiff, whatever might be the amount in dispute. But where the questions at issue were of a simple character, such as breaches of contract and the like, the decision of the lower Courts would be final, unless the amount of the suit exceeded Rs. 50. In cases in which the amount claimed did not exceed Rs. 1,000, the appeal, whether from the decision of the Principal Sudder Ameen or of the Moonsiff, would lie to the Zillah Judge: in suits above that amount, to the Sudder Court. The decision of the Zillah Judge in an appeal from the decision of the Principal Sudder Ameen or Moonsiff, was to be final unless, at the time of deciding, he should record his opinion that the case was a fit one for revision by the Sudder Court, and certify in his judgment his reasons for that opinion.

It was unnecessary to go into the whole details of the Code as recommended by the Commissioners. He thought that, with some alterations and additions, it would be a great improvement in the administration of justice; and he should conclude by moving the first reading of the Bill.

The Bill was read a first time.

CIVIL PROCEDURE (NORTH WESTERN PROVINCES.)

MR. PEACOCK then moved the first reading of a Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in the North Western Provinces." He said this Bill corresponded with the Bill for Bengal. He had felt some doubts at one time whether it would not be better to make one Bill applicable to all the Presidencies and to the North Western Provinces; but as he found that there were various suggestions from the local Governments which might

possibly render it necessary that the Codes of the several Presidencies should slightly differ from each other, he had thought it advisable to frame a separate Bill for each Presidency and for the North Western Provinces. If, after considering those communications, the Council should be of opinion, as probably they would be, that separate Bills were not necessary, and that the same Code of Procedure should be applicable to all the Presidencies, the Council, after considering the Report of the Select Committee to whom the Bills might be referred, might make such alterations as would adapt one of the Bills to all the Presidencies. The introduction of four separate Bills could do no harm, because, if there should hereafter appear a necessity for so doing, the four might, by the course he had just indicated, be converted into one; but, under the Standing Orders, one Bill for all the Presidencies and for Agra could not be converted into four.

He should have mentioned before that the Commissioners had recommended that all witnesses should be examined without oath or affirmation or any warning as a necessary preliminary to their giving evidence; but that every Judge, previously to entering upon his duties, should make a declaration that he would faithfully perform his duties. He had left the Articles on that point untouched, in order that the public might have an opportunity of expressing their opinions regarding them. The whole question of judicial oaths had been referred to a Select Committee who had not yet reported thereon. The Council would probably have the benefit of that Report before they came to discuss the present Bill; and he thought it would be better for the Council to await that Report before they made up their minds finally upon this important subject. In the communication already received from the Government of Madras, there were some very strong observations on the subject; and it was not because he did not feel the force of many of those remarks that he had allowed the Article in question to stand as prepared by the Commissioners. His object simply was to defer dealing with the question until the Council should have had an opportunity of fully considering the point with the aid of all the communications regarding it which the publication of the Bill might draw forth.

The Bill was read a first time.

CIVIL PROCEDURE (MADRAS.)

MR. PEACOCK moved the first reading of a Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Madras."

The Bill was read a first time.

CIVIL PROCEDURE (BOMBAY.)

MR. PEACOCK moved the first reading of a Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bombay."

The Bill was read a first time.

CALCUTTA UNIVERSITY.

THE CHIEF JUSTICE moved that the Council resolve itself into a Committee upon the Bill "to establish and incorporate an University at Calcutta;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I, which provided for the incorporation of the University, being proposed—

THE CHIEF JUSTICE said he should have to make two or three Motions upon it. The first would be a Motion to amend an error in the name of Dr. Mouat. Being a clerical error, it was not absolutely necessary to move to amend it; but he took that course because he wished to say a few words with the view of remedying an injustice which he was believed to have done to the gentleman in question. It appeared that, in one version of his speech on the motion for the first reading, he had been reported to have spoken of the scheme of a University for Calcutta propounded in 1845 as the scheme of Mr. Cameron. If he had been so reported, the Report was not correct. What he really did say, he found accurately given in the Official Report. He had distinctly stated that, when he spoke of Mr. Cameron, he meant to include the gentlemen who at that time

were associated with him in the Council of Education. He was not in India when the scheme was first propounded. His personal knowledge of the matter was derived from the general Report of the Council of Education for the year 1845. He ought, however, to have made special mention of Dr. Mouat; because, although he was not prepared to say whether the first idea of a University for Calcutta had been conceived and suggested by Dr. Mouat or by Mr. Cameron, or whether, like Adams and Le Verrier and other great discoverers, they had hit upon it independently of each other—he felt certain that a very large share of the merit of elaborating the particular scheme, as the principal share of the merit of elaborating almost every scheme suggested by the Council of Education for the improvement of Education in this country, did belong to Dr. Mouat. Having made these observations, he should move that the word "John" be substituted for the word "James" in the 64th line of the Section.

Agreed to.

THE CHIEF JUSTICE said, on the next motion which he had to make, he must, he feared, address the Council at greater length. He had to move that, in the 87th line of the Section, the words "The Rev. William Stephenson, Rector of St. John's College" be omitted. The Council was probably aware of a letter which had appeared in the public prints addressed to himself by the Rev. Mr. Fitzpatrick. That Letter he held in his hand. It was addressed to him as Vice-Chancellor of the University of Calcutta, and was to the following effect:—

"Sir,

"The Report published in the local journals of your speech on 'The Calcutta University Bill,' states that the University had a representative of the Roman Catholic persuasion of Faith, the Rector of St John's College."

He did not think that those were the precise words which he had used; but undoubtedly he did state, and he stated with great satisfaction, that "the Roman Catholic Institutions of this City would have a representative in the Senate of the University."

"Assuming the Report to be correct," the letter proceeded, "I am directed by the Right Rev. Dr. Oliffe to inform you that such a step on the part of Government has been taken without his sanction and notwithstanding His Lordship's express refusal to be a Member of the University Senate. This refusal was grounded on the fact that Government considers religious instruction in the University a purely "optional" matter, while the Catholic Church esteems it an essential ingredient of a sound moral education.

"I have the honor to be,

"Sir,

"Your obedient humble Servant,

JOHN FITZPATRICK, B. A.

"Rector of St. John's College.

"P. S. The 'Government Gazette,' containing the above unauthorized appointment, and your speech, having both been published, a copy of this letter shall be also sent to the public Journals."

The Council would observe that this letter took exception to a statement of his, and took exception to an act of the Government in making a particular appointment. The part of the charge which affected him was easily answered. He had made his statement because he found in the List of the Fellows appointed by the Governor General of India in Council, the name of the Rev. Mr. William Stephenson, Rector of St. John's College. He did not at that time know that any communication had taken place between the Government and Dr. Oliffe on the subject: he did not at that time know of that learned prelate's refusal to be a Member of the Senate of the University. He had spoken entirely on the insertion of the name of the Rev. Mr. Stephenson in the List of the Fellows of the Senate, and on his knowledge that that gentleman had taken a very active and a very useful part in the preliminary proceedings of the Committee appointed to consider the rules and constitution of the University. He had answered the Rev. Mr. Fitzpatrick's Letter. The answer had not been published; but it was to the effect of what he had just said. He had added that he had had nothing to do with the appointment of the Fellows; and that if Dr. Oliffe or Mr. Fitzpatrick conceived that any wrong had been done to either of them in this matter, their complaint ought to be addressed, not to him, but to the Government.

So much for the part of the charge which concerned himself.

With respect to the suggestion that the nomination of Mr. Stephenson was

unauthorized, it was necessary to say something more. When the late Governor General appointed the Committee to consider the rules and constitution of the University, it was fully understood —indeed, he believed it was actually expressed in the Minute—that the Members of that Committee would afterwards be Members of the Senate. Amongst the persons so appointed, was the Rev. Mr. Stephenson. That appointment was made, he believed, with the full concurrence of the then Archbishop of Calcutta, the late lamented Dr. Carew. But whether that was so or not, there could be no doubt that the appointment was accepted by Mr. Stephenson. He held in his hand a letter from Mr. Stephenson to the Home Secretary upon the subject, which he would read:—

"St. John's College,
7th Feb., 1855.

"DEAR SIR,

"In reply to your favor of yesterday, allow me to say that I shall feel much pleasure in complying with his Lordship's wishes. Kindly convey to his Lordship my grateful thanks for the honor conferred, and assure him that I shall be happy to co-operate towards the furtherance of so grand a project.

"I remain,
"Dear Sir,
"Your obedt. Servant,
W. STEPHENSON.

To
CECIL BEADON, ESQ."

Now, he said again that he believed the appointment thus accepted by Mr. Stephenson was made with the concurrence of Dr. Carew; and, further, that Mr. Stephenson acted throughout under the directions of Dr. Carew. He said this because, although he himself was not a Member of that Section of the Committee which dealt with the subject of Degrees in Arts, and in which Mr. Stephenson co-operated, yet he knew that that gentleman had not only taken a very useful and a very active part in the deliberations of his colleagues, but had, from time to time, mentioned what were the feelings and views of the Archbishop on particular subjects. The principles upon which the University was to be established had not been kept secret. The Despatch of the Court of Directors had been published; the Instructions addressed by the Government of India to the Committee for drawing up the plan of the University had been published; and it was impossible to conceive that acute, intelligent, and logical men like Dr. Carew and Mr. Stephenson could have supposed that the Government, in constituting this University, meant to depart from those general principles on which it had theretofore conducted education in this country. The University of Calcutta was not designed to be an instructive establishment. Its object was, to bring as competitors for Degrees in certain branches of Literature and Science those who were brought up either in Government or in private Institutions, and whose religious education had been conducted on the principles adopted in such Institutions. He felt the more surprised that the objection in question had been raised, because, since he had come into the room, he had been assured by two gentlemen who were present that, amongst the Institutions affiliated to the University of London on the model of which the University of Calcutta was to be established, was the College of Stoneyhurst. Nothing was better known in the annals of Education than that the London University College had been originally established as an educational Institution which should embrace persons of every persuasion, and should impart no religious instruction. That was a College—an instructive establishment. Many had objected to that principle. Then was formed the University of London for the purpose of conferring Degrees on the students of the London University College, as well as on those of other Institutions. That University, no doubt, included the London University College which was established on the wide basis which he had mentioned; but it also included King's College which was established in London on Church of England principles; it also included, by way of affiliation, a variety of Dissenting Institutions throughout the country, and, as he believed, the Roman Catholic Institution of Stoneyhurst. Consequently, one would have supposed that the mere announcement, that the University of Calcutta was to be established on the model of the University of London, would have prevented any such misapprehension of its nature and object as that conveyed by Mr. Fitzpatrick's letter.

He now came to what really had passed between the Government and Dr. Oliffe. That which had originally passed, he was not prepared to state, because it was the subject of a private conversation between the Governor General and the gentleman in question. But subsequently, the Home Secretary wrote to Dr. Oliffe the following Letter:—

"REV. AND DEAR SIR,

"The Governor General has requested me, with reference to a recent conversation you had with His Lordship at Government House, to explain to you the nature of the duties that will devolve upon the Senate of the proposed Calcutta University."

The Letter then enumerated certain communications which were forwarded with it as affording this explanation; and proceeded as follows:—

"It seems questionable whether, in strict accordance with the instructions of the Honorable Court, we can provide for degrees or for honors in any subject connected with religion, and whether we are not obliged to confine the scope of the University to objects of a purely secular character, leaving religious instruction to be given and prizes for proficiency in religious knowledge to be awarded in the several Colleges and Schools which it is proposed to affiliate.

"But in accordance with the opinions of a majority of the Sub-Committee, it has been proposed that, for honors in the branch of Mental Science, the candidates should be examined in the Evidences of Revealed Religion as an optional and alternative subject. I may also add that Hebrew has been adopted as one of the Classical languages to be taken up at the examination both for Degrees and for Honors."

DR. OLIFFE, in answer to that letter, wrote the following:—

"*July 10th.*

"DEAR SIR,

"I beg to thank you for your favor of the 24th ult. explaining to me the nature of the proposed University, and shall feel obliged by your informing the Governor General in reply that, as the Catholic Church considers religious instruction an essential ingredient of education, and as no such instruction is to be imparted in the University, I regret I cannot consistently consent to be a Member of its Senate.

"Yours faithfully,

"THOS. OLIFFE."

"P. S. I beg to return your enclosures with many thanks."

Mr. Beadon then wrote a further letter, drawing the Bishop's attention to the distinction upon which he (the Chief Justice) had commented:—

"REV. AND DEAR SIR,

"I have received your letter of this date, in which you decline to become a Member of the Senate of the proposed University upon the ground that no religious instruction is imparted therein, such instruction, as you truly observe, being considered by the Catholic Church an essential ingredient of education.

"I will do myself the honor to lay this letter before the Governor General; and I beg to be permitted to express my sincere regret that you should have found yourself unable to come to a different determination.

"At the same time lest I should have unintentionally led you into error, let me explain that the proposed University is not to be a place of instruction of any kind, secular or religious, but simply a body incorporated for the purpose of giving degrees and honors in various branches of knowledge—religious knowledge not being excluded—to all competent candidates who may offer themselves, without reference to the course of education they may have received, or to the place—provided it be an affiliated or recognized school—in which they may have been educated."

To that letter, Mr. Beadon received no answer; and, therefore, it was beyond a doubt that, upon the correspondence as it stood, Dr. Oliffe had declined to become a Member of the Senate. But Dr. Oliffe had simply declined to become a Member himself: his refusal was limited to himself personally. Assuming that he had the power to decree that no member of the Roman Catholic Church should be a Member of the Senate, he had not done so; and, therefore, it seemed to him rather an unfair thing to say that the appointment of Mr. Stephenson by Government was an unauthorized step. We knew very well that it was not given even to the Roman Catholic Church, with all its boasted discipline, to ensure absolute unity, or altogether to destroy those diversities of opinion which the infinite variety that existed in the constitution of men's minds necessarily engendered. We need not go back to History for that. We need not go back to disputes between Jesuits and Jansenists, or to that page of History in which the master mind of Bossuet was found in painful antagonism to the blameless life and fervent piety of Fénélon. It was sufficient to look at what had happened in this very city. There had been in succession three eminent men holding the office of Vicar Aposto-

lic of Bengal. The first was the Revd. Dr. St. Leger, the second the Revd. Dr. Carew, and the third the Revd. Dr. Oliffe. Dr. St. Leger agreed with the Founders of the Martinière in a common scheme of education which should include Roman Catholics as well as the members of other churches and sects; which proposed for all some religious instruction, and even contained a form of common worship in which, the points of difference being excluded, it was supposed that all the scholars might join. Dr. St. Leger was succeeded by Dr. Carew. Dr. Carew, no doubt conscientiously, objected to this principle; and the result was unfortunate, because many Roman Catholic children were thus deprived of the benefits of the charity. Again, upon the facts which he had stated, Dr. Carew must undoubtedly be considered to have taken a different view of the Calcutta University from that entertained by his successor. He had concurred in the appointment of Mr. Stephenson as a Member of the Committee, and Mr. Stephenson had acted on that Committee. And he (the Chief Justice) would here state what he ought to have stated before, that Mr. Stephenson had actually signed the first Report of the Committee of Arts, which contained the rules under which Degrees in that branch of knowledge were to be granted, and necessarily involved the principle to which Dr. Oliffe now objected.

When he spoke of the conflicting views of these eminent men, he did not presume to impute blame to any of them. We knew well that in our own Church and in other religious bodies, as well as in the Roman Catholic Church, earnest and pious men felt great difficulty as to the degree in which religious instruction ought to be made an essential element in every system of public education; and that these difficulties had hitherto proved in England an insuperable obstacle to the formation of any general and national system of education. But what he meant to say was, that it was quite clear that Roman Catholics, like members of other denominations, might differ amongst themselves on this question; and that, although Dr. Oliffe might conscientiously object to become himself a Member of the Senate, the Government was not bound to infer from that that Mr. Stephenson was not to be appointed a Fellow of the University. He must indeed express his regret that Dr. Oliffe had come to this conclusion; because, looking at the position which that Rev. Prelate held, and to the influence which he must be supposed to possess, he (the Chief Justice) could not but foresee that there might hereafter be some difficulty in affiliating the Roman Catholic Institutions of Bengal to the University, and that consequently many Roman Catholics might be deprived of the benefits which the University was designed to confer. In such a case, the University might lose many intelligent and deserving graduates; but that the general prosperity of the University would be materially impaired, or even that its benefits would be lost to Roman Catholics altogether, he did not believe. He had been assured by one Roman Catholic parent that many Roman Catholics of this city were still desirous that their sons and wards should be graduates of the University; and he trusted that the Senate of the Institution would find the means of opening its doors to some, at least, of those persons.

If the matter had stood thus, he certainly should not have been prepared to make the motion for the removal of Mr. Stephenson's name from the Section which he was about to make. But he had learnt that Mr. Stephenson had left this country. Mr. Stephenson had been appointed on personal grounds. He had been appointed, not only as Rector of St. John's, but also in consideration of the services which he had rendered. Had he been in this country and expressed his willingness to continue a Member of the Senate, he (the Chief Justice) would not have made his motion. But he was not in this country, and he (the Chief Justice) did not know whether he intended to return to it. Consequently, on the general principles upon which the University was to be constituted, he had ceased to be qualified as a Fellow. Again, it was not known from that gentleman himself what his feelings and wishes on this subject might be. But whatever they might be, considering these things, and anxious that there should be no pretext for saying, with or without foundation, that, by any appointment to the Senate of the University, an unfair and unau-

thorized colour was given to the constitution of that body, he (the Chief Justice) thought it safest to move that the words "the Rev. William Stephenson, Rector of St. John's College" be omitted from the Section.

The motion was carried.

THE CHIEF JUSTICE moved that the following words be inserted after line 100 of the Section:—

"Alexander Grant, Esq., Apothecary to the East India Company"—

and

"Henry Stewart Reid, Esq., Director of Public Instruction in the North Western Provinces."

The motion was carried, and the Section then passed.

Sections II to XIII were passed as they stood.

Section XIV empowered the Senate to charge fees for the grant of Degrees, and "upon admission into the University, and for continuance therein."

MR. CURRIE asked what would constitute "admission" and "continuance?" As the object of the University was declared in the Preamble of the Bill, and explained by the Chief Justice, it did not appear what "admission into the University" and "continuance therein" were to be. He had referred to the Charter of the London University; and he found that the only provision there with respect to fees was for Degrees conferred by the Senate.

THE CHIEF JUSTICE replied, that the Honorable Member was under a mistake. In the London University, a fee was chargeable for Entrance Examinations. When a student desired to enter himself for an Examination for a Degree, although he remained at a particular Institution, he had to pass an Entrance Examination, whereby he became a candidate for the Degree, and then he might, after some time, come up and be examined for the Degree. So it would be in the Calcutta University. At present, it was not intended that fees should be charged for "continuance" in the University; nor did it follow that, if the power was given to make that charge, it would ever be exercised: but in a new state of things, it might be expedient to exercise it.

The Section was passed as it stood.

Section XI provided that no person should be admitted as a candidate for any Degree unless he should present to the Senate a certificate from one of the affiliated Institutions that he had completed the course of instruction prescribed by the Senate in the bye-laws to be made by them.

THE CHIEF JUSTICE said, this provision would tie up the hands of the Senate more than it was desirable to do by a legal enactment, and, therefore, he should move that the words "Except by special order of the Senate" be added at the beginning of the Section. There might be cases in which students would be unable to produce the required certificate, and in which it would yet be unjust to refuse a Degree to them. He did not think that the power given by the Section as it stood would be exercised indiscriminately by the Senate: still it would be better to make the amendment which he proposed than to render it necessary for the Senate to come to the Legislature for power to dispense with the certificate in every case in which a candidate for examination might be otherwise eligible.

The motion was carried, and the Section then passed.

MR. PEACOCK moved that the following new Section be inserted after Section VI:—

"The Governor General of India in Council may cancel the appointment of any person already appointed or hereafter to be appointed a Fellow of the University; and as soon as such order is notified in the Gazette, the person so appointed shall cease to be a Fellow."

He said, he moved this Section because he considered that, in consequence of what had taken place, there might be some necessity for it. At present, the appointment of the Fellows of the University was vested in the Governor General in Council; but no power was given to him to cancel any such appointment. On the motion of the Honorable and learned Chief Justice, the name of the Rev. Mr. Stephenson had been omitted from Section 1; but when that Section came to be examined, it would be seen that the removal of Mr. Stephenson's name from it did not remove him from his appointment as a Fellow of the University. The Governor General in Council had already ap-

pointed Mr. Stephenson a Fellow of the University, and the appointment had been gazetted. Section 1 of the Bill merely enacted that certain persons, including Mr. Stephenson—being the First Chancellor, Vice-Chancellor, and Fellows, and all persons who might thereafter become or be appointed Chancellor, Vice-Chancellor, or Fellows—should be a Body Corporate. The Section had nothing to do with Mr. Stephenson's appointment as a Fellow of the University. The omission of his name from that Section did not cancel or get rid of his appointment as a Fellow, but merely of his appointment as a Member of the Corporation.

The Governor General in Council had no power, as the Bill stood, to cancel any appointment of a Fellow, when once made; and he (Mr. Peacock) proposed to supply the omission by introducing the Section now before the Committee. If his motion should be carried, it would rest with the Governor General in Council to cancel the appointment or not, as he should think fit. Having already been appointed a Fellow of the University, Mr. Stephenson would, by virtue of Section III of the Act, be a Member of the Corporation and of the Senate of the University, unless his appointment as Fellow should be cancelled.

When the Honorable and learned the Chief Justice moved to remove Mr. Stephenson's name from Section 1, he (Mr. Peacock) entertained some doubts whether the Council ought to support the motion. Mr. Stephenson had not himself applied to have his name struck out of the Bill, or his appointment as a Fellow cancelled; nor had he refused to accept the appointment, which, of course, he was at full liberty to do. The motion rested entirely upon Dr. Oliffe's objection that the appointment had been made without his (Dr. Oliffe's) sanction, and after his Lordship's express refusal to be himself a Member of the University Senate. He (Mr. Peacock) did not think that it was necessary to obtain the sanction of Dr. Oliffe, or of any other Archbishop or Bishop, previously to the appointment of a particular person as a Fellow or Member of the Senate of the University. For what had the Council to do with Dr. Oliffe or any other individual that rendered it necessary for them to obtain his sanction to the nomination of Mr. Stephenson? But as Mr. Stephenson was absent from India, and the Council could not ascertain what his own views and feelings in this matter might be after considering Dr. Oliffe's objections, and as his express consent to become a Member of the Senate had not been obtained —though his consent might clearly be implied from the fact of his having accepted office, and acted as a Member of the Committee appointed by the Government to consider the rules and constitution of the University—he (Mr Peacock) had not objected to the motion of the Honorable and learned Chief Justice. Had Mr. Stephenson been in India, he should have thought it necessary, previously to striking his name out of the Bill, to ascertain what were his own wishes and feelings upon the subject, and whether he was willing to accept the appointment or not. But as he was not in India, and his express consent to become a Fellow of the University had not been obtained, he thought it better, under the circumstances, to remove his name from the Bill. As he had already pointed out, however, the removal of his name from the Bill would not get rid of his appointment as a Fellow of the University; and he proposed to insert a new Section with the view of giving the Governor General in Council power to cancel the appointment. It was very much to be regretted that Dr. Oliffe should have considered it necessary to adopt the course which he had done. When he considered the object of the University and the nature of the duties of the Senate, he could see no reason why a Member of the Roman Catholic Church should not act as a Fellow of the University. What were the duties of the Senate? By Section X of the Bill, they were to have power, after examination, to confer the several Degrees of Bachelor of Arts, Bachelor of Laws, Licentiate of Medicine, and Master of Civil Engineering, and also to confer marks of honor for a high Degree of proficiency in the different branches of Literature, Science, and Art according to the rules to be determined by the Bye-laws; and by Section VII they were to have the entire management of, and superintendence over, the affairs and property of the University: and in all cases unprovided for, they

were authorized to act in such manner as should appear best calculated to promote the purposes intended by the University. They were also empowered

"from time to time to make and alter any Bye-laws and Regulations (so as the same be not repugnant to Law, or to the general objects and provisions of this Act) touching the examination for Degrees and the granting of the same; and touching the examination for honors and the granting of Marks of honor for a higher proficiency in the different branches of Literature, Science, and Art; and touching the qualifications of the candidates for Degrees, and the previous course of instruction to be followed by them, and the preliminary examinations to be submitted to by them; and touching the mode and time of convening the meetings of the Chancellor, Vice-Chancellor, and Fellows; and, in general, touching all other matters whatever regarding the said University."

It was open to Members of the Roman Catholic religion, as well as to those of any other religion, if they pleased, to become candidates for Degrees or for honors in Literature, Science, and Art; and it therefore seemed to him to be desirable that some Member of the Roman Catholic Church should be on the Senate to co-operate in the framing of the Rules upon which the examinations were to be conducted, and relating to the previous course of instruction to be followed, so that he might watch over the interests of the Members of his own Church, and take care that no rules should be unintentionally laid down which might form any impediment to their availing themselves of the benefits of the University. But if Mr. Stephenson's name were struck out, there would not, he believed, be any Member of the Senate of the Roman Catholic religion. He had no doubt, however, that the gentlemen composing the Senate, even if Mr. Stephenson should cease to be a Member of that body, would attend to the interests of students from Roman Catholic Institutions who might desire to offer themselves as candidates for Degrees or Honors in the University, with just as much care and impartiality as if they had a Member of the Roman Catholic religion amongst them. He did not think that the objection of Dr. Oliffe to become a Member of the Senate would necessarily prevent Roman Catholic students from availing themselves of the benefits of the University. He thought that Dr. Oliffe had no more right to prevent the Senate from conferring Degrees or Honors upon any student of the Roman Catholic religion than he had to prevent the nomination of Mr. Stephenson as a Member of the Senate. It might be highly injurious to the Roman Catholics of this city if they should be prevented from becoming candidates for Degrees or Honors at the University in any department of knowledge to which they might desire to devote themselves in life. It might possibly be thought right to allow Degrees at the University to be considered a qualification for certain offices or appointments. And if, for instance, the Degree of Bachelor of Laws should hereafter be considered a sufficient qualification for admission to practise as a Pleader in the Courts of Law, or for an appointment as a Principal Sudder Ameen or Moonsiff, it would be extremely hard if a Roman Catholic youth could be prohibited on account of his religion from becoming a candidate for such a Degree. The amendment which had just been made upon the motion of the Honorable and learned Chief Justice would enable the Senate, if it should see fit, to dispense with a certificate in the case of a young man educated at one of the Roman Catholic Institutions, if the feeling against the University should be carried so far by those who presided over such Institutions as to induce them to refuse to grant a certificate to enable him to become a candidate for a Degree at the University.

MR. PEACOCK'S motion was then put, and carried.

The Preamble and Title were passed as they stood.

The Council resumed its sitting.

CATTLE TRESPASS.

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill "relating to Trespasses by Cattle;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to IX were passed as they stood.

Section X prohibited Police Officers and pound-keepers from purchasing cattle at sales under the Act "on pain of dismissal from office."

MR. PEACOCK moved that the words "on pain of dismissal from office" be left out. They would make it appear that dismissal from office was the only punishment to be imposed for the offence; whereas the Penal Code provided other penalties for persons in office becoming purchasers where prohibited.

Agreed to.

After a verbal amendment, introduced on the motion of Mr. Allen, the Section was passed.

Section XI was passed after the amendment of a clerical error.

Section XII was passed as it stood.

Section XIII provided the penalty for forcibly opposing the seizure of cattle trespassing, or for rescuing the same.

MR. CURRIE said that the original Section provided simple imprisonment for a period not exceeding six months, or a fine not exceeding 200 Rupees, or both. For those penalties, the Select Committee had substituted imprisonment with or without hard labor for a period not exceeding three months, or a fine not exceeding 500 Rupees, or both. They had introduced this alteration with the view of making the Section tally with Clause 18 of Chapter X of the revised Penal Code, which related to the resistance of public servants in the discharge of their duties. But he thought that the offence provided for by Clause 13 of that Chapter of the Code was more in the nature of the offence contemplated by Section XIII of this Bill. Clause 13 of the Chapter in the Code was as follows:—

"Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

He thought that imprisonment of either description for a term not exceeding six months was a more appropriate maximum penalty than for a term not exceeding three months; and he should therefore, move that the words "three" before the word "months" be left out of the Section in order that the word "six" might be substituted for it.

The motion was carried, and the Section then passed.

Sections XIV to XXI were passed as they stood.

In Section XXII a date was inserted making the Act take effect from the 1st of May 1857.

The Preamble was passed after amendments which made it correspond with the alterations made in the Bill by the Select Committee.

The Title was passed as it stood.

The Council having resumed its sitting, both the Bills settled in Committee were reported.

CALCUTTA UNIVERSITY.

THE CHIEF JUSTICE moved that the Bill "to establish and incorporate an University at Calcutta" be read a third time and passed.

The motion was carried, and the Bill read a third time.

Moved by the same that Mr. Grant be requested to take the Bill to the Governor General for his assent.

Agreed to.

NOTICE OF MOTION.

MR. GRANT gave notice that he would, on Saturday next, move the first reading of a Bill to amend the Law for the impressment of carts for the use of troops marching.

APPELLATE JURISDICTION OF PRINCIPAL SUDDER AMEENS (BOMBAY).

MR. PEACOCK moved that the communication from the Home Department this day reported, on the subject of extending the appellate jurisdiction of Principal Sudder Ameens in Bombay, be printed.

Agreed to.

BOMBAY CENSUS.

MR. LEGEYT moved that a communication received by him from the Government of Bombay be laid upon the table and referred to the Select Committee on the Bill "for taking account of the population of the town of Bombay."

Agreed to.

BOMBAY MUNICIPAL ASSESSMENT.

MR. LEGEYT moved that a communication received by him from the Clerk of Her Majesty's Justices of the Peace

at Bombay concerning a proposed Bill relating to the Municipal Assessment of Bombay be laid upon the table and printed.

Agreed to.

NOTICES OF MOTIONS.

MR. PEACOCK gave notice that he would, on Saturday next, move the second reading of the Civil Procedure Bills which were read a first time this day.

Also the first reading of Bills for simplifying Criminal Procedure in Bengal, Madras, Bombay, and the North Western Provinces.

The Council adjourned.

Saturday, January 24, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	D. Eliott, Esq.,
Hon. Major General J. Low,	C. Allen, Esq.,
	P. W. LeGeyt, Esq.,
Hon. J. P. Grant,	E. Currie, Esq., and
Hon. B. Peacock,	Hon. Sir A. W. Buller.

CIVIL REGISTRATION OF BIRTHS.

THE CLERK presented to the Council a Petition of Inhabitants of Bangalore stating that, by reason of their creed, they are precluded from recording the births of their children in the Ecclesiastical Registers in this country, and praying for the passing of an Act for the Civil registry of births.

HINDOO POLYGAMY.

Also the following Petitions praying for the abolition of Hindoo Polygamy:—

A Petition of Hindoo Inhabitants of Bengal.

Three Petitions of Hindoo Inhabitants of Hooghly.

MR. GRANT moved that the above Petitions be printed.

Agreed to.

POLICE AND CONSERVANCY (SUBURBS OF CALCUTTA AND HOWRAH.)

MR. CURRIE presented the Report of the Select Committee on the Bill "to make better provision for the order and good government of the Suburbs of Calcutta and of the Station of Howrah."

IMPRESSMENT OF CARTS (BENGAL.)

MR. GRANT postponed the motion (of which he had given notice for this day) for the first reading of a Bill to amend the law for the impressment of Carts for the use of Troops marching.

CRIMINAL PROCEDURE (BENGAL.)

MR. PEACOCK moved the first reading of a Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in Bengal, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction." In doing so, he said that he had prepared the Bill on the same principle as the Bill for simplifying the Civil Procedure of India—namely, by reserving, for the present, the question of the amalgamation of the Supreme and Sudder Courts, and leaving the Sudder Courts to exercise the same Criminal jurisdiction as they did at present. Accordingly, he had proceeded with this Code as it had been prepared by the Commissioners.

The Code provided four classes of Courts—Courts of Session; Courts of the Magistrates; Subordinate Criminal Courts of the 1st Class; and Subordinate Criminal Courts of the 2nd Class. First Assistants to Magistrates and Principal Sudder Ameens were to form the Subordinate Criminal Courts of the 1st Class; and Second Assistants to Magistrates, and Moonsiffs, were to form the Subordinate Criminal Courts of the 2nd Class. The Courts of Session were to exercise original jurisdiction in respect of all offences punishable under the Penal Code, provided that, in any case in which the accused was convicted of an offence which was punishable with death, they should not pass sentence of death, but should refer the case to the Sudder Court. The Courts of Session were also to exercise exclusive jurisdiction in certain specified cases.

Magistrates would be empowered to try all offences not assigned to the ex-

clusive jurisdiction of the Session Courts, and to pass sentence of imprisonment for a term not exceeding two years, or of fine not exceeding Rs. 1,000, or, subject to that limitation, of fine together with imprisonment where both punishments were authorized by the Penal Code. The Subordinate Courts of the 1st and 2nd classes would have jurisdiction over the offences specified in a Schedule of the Code as triable by them respectively. Those of the 1st class would be empowered to pass sentence of imprisonment for a term not exceeding one year, or of fine not exceeding Rs. 200, or of both where both punishments could be imposed under the Penal Code; and those of the 2nd class would be empowered to pass sentence of imprisonment for a term not exceeding three months, or of fine not exceeding Rs. 50, or of both.

There was an Article in the Code which involved a question of considerable importance, and would, no doubt, give rise to much conflict of opinion and become the subject of future discussion. He alluded to Article 8 of Chapter I, which provided as follows:—

"No person whatever shall, by reason of place of birth, or by reason of descent, be in any criminal proceeding whatever excepted from the jurisdiction of any of the Criminal Courts."

This Article would invest the Courts of the country with jurisdiction over European British subjects. To him, it appeared to be correct in principle; for he could not understand upon what ground it could be contended that any one class of persons should be exempt from the jurisdiction of those Courts. No Frenchman, or German, or American, or Armenian, or East Indian, was exempt from their jurisdiction. European British subjects alone enjoyed that privilege; and the Council was aware that there were many cases in which, on account of the extreme inconvenience, expense, and delay which must necessarily be caused by committing defendants for trial to the Supreme Courts for offences committed in distant parts of the country, offenders were frequently allowed to go unpunished. The inconvenience was not confined to prosecutors. It extended also to witnesses, who were, frequently, in no way interested in the proceedings. The Article to which he referred would bring an offender, whatever his place of birth or whatever his descent, under the jurisdiction of the Court within the local limits of which his offence might be committed.

There was an Article in the Code which exempted proceedings in any Criminal Court from Stamp Duties. When moving the first reading of the Bill for simplifying Civil Procedure, he had stated that the Government of India had, after mature deliberation, come to the conclusion that financial considerations rendered it impossible to give up the large amount of revenue derived from Stamp or Judicial proceedings; and he had struck out from the present Bill the Article relating to the same subject.

Chapter II provided for obtaining a summons or warrant.

Chapter III provided the form of a warrant, and the mode of its execution.

Chapter IV provided for arrests without warrant. It was not necessary to enter into the details of the provisions upon this head. It would be sufficient to say that, by Article 58, a Police officer or other person who saw any offence committed for which a warrant might issue upon complaint, might, without warrant, arrest the offender.

Chapter V dealt with cases of escape and retaking.

Chapter VI related to the issue of Search Warrants.

Chapter VII provided for preliminary enquiries by the Police. It was unnecessary to enter into the details contained in this Chapter, except to refer to Article 90. That article involved a question which would, no doubt, form a subject for future discussion. He thought that no Member of the Council, by supporting the Motion for the first and second reading of the Bill, would be bound to support each Article in the Code. The Code had been prepared with great care, and, in his judgment, would very much simplify the procedure of the Courts of Criminal Judicature But there were certain Articles which might give rise to difference of opin on. He had thought it right to insert them as framed by Her Majesty's Commissioners, and to leave every Honorable Member to adopt any amend-

ments which it might appear expedient to make after considering the communications which the publication of the Code might elicit, and the Report of the Select Committee to whom the Code would be referred.

Article 91 provided that—

"It shall not be competent to a Darogah or other Police Officer to examine a person accused of a criminal offence, or to reduce into writing any admission or confession of guilt which he may propose to make."

This provision had no doubt been introduced to prevent the practice of torture.

Article 57, which dealt with the same subject, said—

"No officer or other person, after the arrest of any suspected person, is to offer to him any inducement, by threat or promise or otherwise, to make any disclosure, but shall, when necessary, apprize him of the cause of arrest, and leave him free to speak or keep silence: and no such officer or other person shall, after such arrest, prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will."

So that, although a Police Officer was to hold out no inducement to a prisoner to make a disclosure, he was to leave him free to speak or keep silence, and not to prevent him from making a voluntary disclosure. In reading this Article, he had asked himself what its object was?—with what object a prisoner was to be permitted to make a voluntary disclosure? Was it that the disclosure might operate as a clue to further discovery? Or was it that it might be used as evidence against the prisoner? If it was to be used as evidence against the prisoner, it appeared to him that it would be much better to allow it to be reduced into writing than to be left to the memory of the Police Officer. When he came to a subsequent part of the Code, he found that a voluntary confession by a prisoner might be used as evidence against himself. That being the case, he could not see the necessity of preventing Police Officers from writing down disclosures made by prisoners of their own free will. On the contrary, he thought it would be far more satisfactory that Police Officers should be required to take down such disclosures in writing, because the writing would be some check against perjury, and would at least prevent Police Officers from adapting their evidence as to statements alleged to be made by prisoners to circumstances which might afterwards transpire. In Article 130, he found it provided that—

"It shall not be competent to the Magistrate to receive in evidence against the Defendant any written admission or confession of guilt, or any statement made by him to the Darogah, or other Officer of Police, and by him reduced into writing."

So that an admission or confession of guilt, or any other statement made by a prisoner, if reduced into writing by a Police Officer, could not be received. Then, Article 131 provided that—

"Nothing contained in the last preceding Article shall prevent the Magistrate from receiving the evidence of a Police Officer as to any unrecorded admission or confession of guilt, or other statement made to him by the Defendant."

With such a provision, it appeared to him that the Code would not be at all calculated to prevent torture or perjury. If evidence given by Police Officers as to unrecorded admissions or confessions were to be received, the fact of not allowing them to write down admissions or confessions would not in any degree restrain them from inflicting torture for the purpose of obtaining a confession, or from committing perjury for the purpose of proving one. Therefore, although he had not altered the provisions on this subject, but had left them to be considered and dealt with by the Council hereafter, he thought it right to state that his own opinion was that disclosures made by prisoners ought either to be taken down in writing, or not to be used as evidence against the Defendant at all. His impression was, that the statement ought not to be used as evidence against the prisoner, until greater reliance could be placed upon the Police of the country. He was well aware that such a provision would cause the rejection of a class of evidence most valuable when reliance could be placed upon the witnesses.

Another Article upon which he had no doubt some difference of opinion would

arise, was that which provided that no oath, affirmation, or warning should be administered to witnesses. That Article also involved a very important question; and he had retained it in the Code, as he had retained a similar Article in regard to Civil cases in the Code of Civil Procedure, for future consideration and discussion by the Council.

Chapter VIII provided for Contempts and disobedience of orders.

Chapter IX enabled the Advocate General to file criminal informations in Courts in the Mofussil in the same way as he was now authorized to do in the Supreme Court.

Chapter X provided for Prosecutions in certain cases, which it was unnecessary to detail.

Chapter XI provided the mode in which Magistrates should conduct preliminary enquiries in cases triable by the Sudder Court or the Courts of Session, and empowered them to tender conditional pardon to criminals; to admit Defendants to bail in certain cases; and to liberate Defendants where there should appear no sufficient grounds for putting them on their trial on a formal charge, or of remanding them.

Chapter XII provided the forms in which Magistrates should frame charges in cases which they sent up to the Sudder Court or the Courts of Session for trial. It might probably be considered hereafter that these forms were rather too general and indefinite. They did not state either the time or place at which the offence was charged to have been committed. It was possible that the Law Commissioners had thought that copies of the depositions which were to be made before the Magistrates would be furnished to the Defendant, and that these would be sufficient to supply him with all the information required; but it appeared to him (Mr. Peacock) that it would be far better to specify in the charge that the offence was committed on or about such a day and at or near to such a place, especially when he found in a subsequent part of the Code that the Court would be allowed to make any amendment in the charge which might serve the ends of Justice, and either postpone the trial of the case, or proceed with it at once.

Chapter XIII provided for the trial by Magistrates of offences within their jurisdiction which were punishable, under the Penal Code, with imprisonment for a period exceeding six months.

Chapter XIV provided the procedure in those classes of cases in which Magistrates had jurisdiction to commit summarily.

Chapter XV provided for inquiries and trials before the Subordinate Courts of Criminal Judicature.

Chapter XVI consisted of a single, but a very important Article. It provided that the Courts in which preliminary investigations and trials were held by Magistrates or Judges of the Subordinate Courts should be open Courts, to which the Public generally might have access; but that the Magistrates or Judges of Subordinate Courts might refuse admission to persons during a preliminary investigation of any particular case to be subsequently tried by the Sudder Court or the Courts of Session if it should appear to them that the ends of justice would be best answered by so doing. This discretion it was very proper to allow, in order that information might not get abroad which might enable persons to avoid apprehension or otherwise defeat the ends of justice.

Chapter XVII was a very important one. It got rid of the necessity of passing what was called the Mochulka Act. It enabled the Courts to require

"a person charged with rioting, assault, or other violent breach of the peace, or with abetting the same, or with assembling armed men, or taking other unlawful measures with the evident intention of committing the same,"

to enter into personal recognizance to keep the peace, and also, if necessary, to find sureties. This might be done either after conviction of the offence, or even before conviction where such a course might appear to be necessary for the maintenance of peace. In cases where it might appear necessary to require sureties in addition to the personal recognizance, Judges of the Session Courts might, for default, direct the Defendants to be kept in custody for any term not exceeding three years, and Magistrates for any term not exceeding one year. If it should appear to a Magistrate that the period for which the party should be bound to keep the peace ought to exceed one year, he must

record his opinion to that effect, and refer the case to the Court of Session.

Chapter XVIII provided for taking security for good behaviour. Magistrates would be authorized to require security for good behaviour whenever it should appear to them, from evidence as to general character, that a person was, by repute, a robber, house-breaker, or thief, or a receiver of stolen property knowing it to have been stolen. If it should appear to the Magistrate that a Defendant was of a character so desperate and dangerous that his release, without security, at the expiration of the limited period of one year, would be hazardous to the community, the Magistrate must record his opinion to that effect, with an order specifying the amount of security to be given, the number of sureties, and the period, not exceeding three years, during which the sureties should be responsible. If the Defendant should fail to furnish the security required, the proceedings were to be laid before the Court of Session.

The Chapter then provided the means of compelling Defendants to give security, namely, imprisonment for a period not exceeding that for which the security might be required; and it further provided for the discharge of sureties after they should have surrendered the persons for whom they had become responsible.

Chapter XIX provided for Trials by Juries and Assessors. That was a Chapter which would probably require some amendment. He had omitted from it two Articles inserted by the Commissioners—Article 257, which provided that Grand Juries should be abolished; and Article 258, which provided that the trial of all offences within the limits of the Town of Calcutta, except offences punishable upon summary conviction, should be by Jury. The necessity for these Sections depended on the reserved question of amalgamation.

Article 259 provided that—

"The provisions of the preceding Article may be extended by the Governor General in Council to such places beyond the limits of the town of Calcutta as he may see fit."

He had altered that Article so as to give it the same sense which it bore when the preceding Article stood in the Code.

Article 260 provided as follows:—

"Criminal trials before the Session Judge, in which a British subject, or a European, or an American, or an East Indian, or an Armenian, or a person of any other class to which the Governor-General in Council may see fit to extend this rule, registered according to such rules as the Governor-General in Council shall prescribe, is the Defendant, or one of the Defendants, shall be by Jury, of which at least one-half shall consist, if such Defendant desire it, of persons so registered."

He thought that this was an Article which might require some alteration. It appeared to him that much difficulty would arise if it were retained. If one-half of a Jury were to consist of registered persons, how was the Government to obtain the names of persons for registration; where was the Registry to be kept; and how was the system to be worked? It appeared to be that the Code did not sufficiently provide for these objects, and he thought that an attempt to carry out the proposed plan in this country would be attended with some difficulty. He had deemed it advisable, however, to leave the Article as it stood, in order that it might undergo consideration by the Council in Committee.

Article 265 enacted as follows:—

"For all classes of the community not included in the number of those to whom the mode of trial by Jury has, by the above provisions, been extended, trials before the Session Judge shall be conducted with the aid of two or more assessors as members of the Court, with a view to the advantages derivable from their observations, particularly in the examination of witnesses."

He thought that this was hardly right. It made too great a distinction between trials by Jurors and trials by Assessors. It appeared to him that if one class of the community was to be entitled to trial by Jury, it should at least be left optional with all other classes of the community to claim trial by a similar tribunal

Chapters XX and XXI he had omitted, because they would not be adapted to the state of things unless the Supreme and Sudder Courts were amalgamated.

Chapter XXII provided for trials before the Courts of Session.

Chapter XXIII provided the procedure of the Sudder Court as a Court of

Reference; and Chapter XXIV for Finding, Judgment, and Sentence.

Chapter XXV related to the procedure of the Sudder Court as a Court of Revision.

Chapter XXVI provided for appeals.

By Article 331, there would be no appeal from a Judgment of acquittal passed by any Criminal Court.

By Article 332, an appeal would lie

"in all cases of conviction by the Magistrates in the Mofussil, and by the Judges of the subordinate Criminal Courts, to the Session Judge; and in all cases of conviction by the Session Judges in the exercise of original jurisdiction, to the Sudder Court."

By Article 336, an appeal would also lie

"from all orders in proceedings other than Criminal trials, passed by the Magistrates in the Mofussil and by the Judges of the subordinate Criminal Courts, to the Session Court."

By Article 337,

"The petition of appeal from a sentence of the Session Judge must be presented within ninety days immediately following, and exclusive of the day on which sentence was passed; and from the sentence or order of any other Court, within thirty days, calculated in the same manner."

It appeared to him that the right given by these Articles might have the effect of overwhelming the Courts of Session with appeals. As he understood the Articles, appeals would lie from every decision of a Magistrate or a Judge of a Subordinate Court But it appeared to him that it was doubtful whether an appeal should be allowed in every case. The amount of fine might be so small, or the period of imprisonment so short that it might expire before the appeal could possibly be granted. Article 340, however, provided—

"It shall be at all times lawful for a Session Judge, and for a Magistrate, or other officer exercising the powers of a Magistrate, to call for and examine the records of any Court immediately subordinate to their respective Courts for the purpose of satisfying themselves as to the regularity of the proceedings of such subordinate Courts; but it shall not be lawful for any other Court than the Sudder Court to alter any sentence of any subordinate Court except upon appeal by parties concerned duly made according to the foregoing provisions."

That was a very important provision; and probably it might be found that, with some alterations, it might obviate the necessity of giving an appeal in every case.

The Code concluded with a Schedule relating to the offences made punishable under the Penal Code, stating whether particular offences were bailable or not, by what Court they were triable, what amount of punishment might be inflicted in each case, and when the punishment should be cumulative. This would be of great assistance to those who would have to administer the Penal Code and the proposed system of Criminal Procedure.

Upon the whole, it appeared to him that this Code, with some modifications, would be of great benefit to the country, and would very much simplify the procedure of the Criminal Courts.

With these observations he moved the first reading of the Bill which applied to the Lower Provinces of the East India Company in Bengal.

The Bill was read a first time.

CRIMINAL PROCEDURE (NORTH WESTERN PROVINCES.)

MR. PEACOCK moved the first reading of a Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in the North Western Provinces, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction." He said, it was unnecessary for him to make any observations in regard to this Bill. It was the same in substance as the Bill relating to the Lower Provinces. He might mention that the reason which had induced him to frame four separate Bills with regard to Civil Procedure had induced him to adopt the same course with regard to Criminal Procedure. The four Bills might hereafter, by an amendment in any one of them, be consolidated if that arrangement should be considered desirable. If, on the other hand, it should appear that the circumstances of any particular Presidency required alterations to be introduced in the Bill applicable to that Presidency, the four Bills might stand with the necessary alterations.

The Bill was read a first time.

CRIMINAL PROCEDURE (MADRAS.)

MR. PEACOCK moved the first reading of a Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in Madras, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction."

The Bill was read a first time.

CRIMINAL PROCEDURE (BOMBAY.)

MR. PEACOCK moved the first reading of a Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in Bombay, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction."

The Bill was read a first time.

CIVIL PROCEDURE.

MR. PEACOCK postponed the Motion (which stood in the Orders of the Day) for the second reading of the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bengal," and also in respect of the Bills for the North-Western Provinces, Madras, and Bombay. He said, at the last Meeting of the Council he had given notice that he would move for the second reading of these Bills on this occasion, because he was anxious that no unnecessary delay should take place between the first and second readings; but he was afraid he had fixed too early a day, since it had been found impossible to print and circulate the Code during the week. Although the Standing Orders did not actually require that a Bill should be printed and circulated amongst the Members of the Council before the Motion for the second reading, he certainly did think that it was intended that that should be done as a general rule, in order that Members might have an opportunity of considering the measure before they gave their assent to its principle. Had the present been an ordinary case, he should not have thought it necessary to give notice of motion for the 2nd reading on so early a date; but he had been under the impression that the Blue Books containing the Codes of Procedure had been in the hands of every Member, and he thought that the alterations which he had made in the Code, none of which was of a substantial nature, might be in writing. He found, however, that every Member had not a copy of all the Codes, and, if any Member of the Council desired it, he would postpone his Motion for the second reading of all the Bills relating to Civil Procedure. A delay of one or two weeks would not be of very great consequence. If the Bills should be printed and circulated sufficiently early next week, he should give notice at the ensuing Meeting for the second reading that day week: if not, he should defer his Motion until that day fortnight.

CATTLE TRESPASS.

MR. CURRIE moved that the Bill "relating to Trespasses by Cattle" be read a third time and passed.

The motion was carried, and the Bill read a third time.

BOMBAY TOBACCO DUTIES.

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "to amend the Law relating to the duties payable on Tobacco, and the retail sale and warehousing thereof in the Town of Bombay;" and that the Committee be instructed to consider it in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to III were passed as they stood.

Section IV was passed after an amendment.

Sections V and VI were passed as they stood.

Sections VII, VIII, and IX were passed after amendments.

Section X was passed as it stood.

Sections XI and XII were passed after amendments.

Section XIII was passed as it stood.

Section XIV provided that every retail dealer in Tobacco should on or before the 10th of every month make to the Revenue Commissioner or other licensing officer a separate return, for each shop, of the quantity of Tobacco which he had on hand at the beginning of the preceding month; the quantity received during such month, and the persons from

whom, and the dates on which he received it; and the stock remaining at the close of such month.

After some verbal amendments, introduced on the motion of Mr. LeGeyt—

Mr. ALLEN said, it appeared to him that this would be a very vexatious provision. Section XV required that retail-dealers should make entries of the same particulars in their books, and that these books should be open to the inspection of the Revenue officers. That ought to be quite sufficient for the protection of the revenue, without further providing that retail-dealers should make monthly returns, which, after all, could never be looked at. He should, therefore, move that Section XIV be left out.

The question being put, the Council divided:—

AYES—5.	NOES—4.
Sir Arthur Buller,	Mr. Currie,
Mr. LeGeyt,	Mr. Allen,
Mr. Peacock,	Mr. Eliott,
The Chief Justice,	General Low.
The Chairman.	

Section XV was passed as it stood.

The remaining Sections of the Bill were passed after amendments.

The Schedule, Preamble, and Title were passed as they stood.

The Council having resumed its sitting, the Bill was reported.

MESSENGER.

MR. CURRIE moved that Mr. Peacock be requested to take the Bill "relating to trespasses by Cattle" to the Governor General for his assent.

Agreed to.

CIVIL REGISTRATION OF BIRTHS.

MR. ELIOTT moved that the Petition of Inhabitants of Bangalore (presented to the Council this day) be printed.

Agreed to.

NOTICE OF MOTION.

MR. LEGEYT gave notice that he would, on Saturday the 31st Instant, move the third reading of the Bill "to amend the law relating to the duties payable on Tobacco, and the retail sale and warehousing thereof in the Town of Bombay."

The Council adjourned.

Saturday, January 31, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. Major General J. Low,	C. Allen, Esq.,
Hon. J. P. Grant,	P. W. LeGeyt, Esq.,
Hon. B. Peacock,	E. Currie, Esq.,
D. Eliott, Esq.,	and
	Hon. Sir A. W. Buller.

The following Message from the Governor General was brought by Mr. Peacock and read.

MESSAGE No. 94.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 10th January, 1857, entitled "A Bill to prevent the overcrowding of Vessels carrying Native Passengers in the Bay of Bengal."

By Order of the Right Honorable the Governor General.

R. B. CHAPMAN,
Offg. Secy. to the Govt. of India.

FORT WILLIAM,
The 17th Jan. 1857.

The following Message from the Governor General was brought by Mr. Grant and read.

MESSAGE No. 95.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 17th January, 1857, entitled "A Bill to establish and incorporate an University at Calcutta."

By Order of the Right Honorable the Governor General.

CECIL BEADON,
Secy. to the Government of India.

FORT WILLIAM,
The 24th Jan. 1857.

POLICE AND CONSERVANCY (SUBURBS OF CALCUTTA AND HOWRAH).

THE CLERK presented a Petition from the British Indian Association containing certain suggestions and remarks relating to the Bill "to make better provision for the order and good government of the Suburbs of Calcutta and of the Station of Howrah."

MR. CURRIE said, the Report of the Select Committee on the Bill had already been presented; but he should move that the Petition be printed.

Agreed to.

BOMBAY MUNICIPAL ASSESSMENT.

THE CLERK presented a Petition from Merchants, Bankers, Shroffs, and other European and Native Inhabitants of Bombay and Colaba in support of the levy of town dues or rates on goods in transitu and on the shipping in the harbour, provided for in the Draft Bill (about to be submitted to the Council) "to amend and consolidate the laws relating to the municipal taxes in the Islands of Bombay and Colaba."

MR. LEGEYT moved that the Petition be printed.

Agreed to.

HINDOO POLYGAMY.

THE CLERK presented a Petition from Inhabitants of Furreedpore praying for the abolition of Hindoo Polygamy.

MR. GRANT moved that the Petition be printed.

Agreed to.

IMPRESSMENT OF CARRIAGE AND SUPPLIES FOR TROOPS (BENGAL.)

MR. GRANT moved the first reading of a Bill "to amend the Law regarding the provision of carriage and supplies for troops and travellers, and to punish unlawful impressment."

He said, the title which he proposed for this Bill was a Bill to amend the Law; but the real object of the Bill was wholly to put an end to the interference of the Civil Power in the provision of carriage and supplies for troops, in all except those truly emergent cases where it might be absolutely necessary to the safety of the country for the Executive Government to have a power beyond the general Law. This subject had given rise to more complaints, more correspondence, more Resolutions of Government, and more General Orders than perhaps any other subject with which he was acquainted. It had first come officially before him in the year 1852, when he was Secretary to the Government of Bengal, in consequence of two cases of grievous oppression which were sent up to Government by Mr. Torrens, who was at that time the Magistrate of the Twenty-four Pergunnahs; and he had then gone over the public records relating to the question from the year 1806 when the first Regulation on the subject was passed, and had prepared a Note upon it, which was laid before the Governor of Bengal. He proposed to append to his Statement of objects and reasons, this Note amongst other papers. It was tedious, but it would shew all that had been done in regard to impressment up to that time. It would be seen that complaints had been constant; that Government had always been aware of the wrongs done under the Law; that they had repeatedly endeavored to remedy the evil by restrictive Rules and Regulations; and that all these restrictive Rules and Regulations had completely failed in their object.

To shew the practical working of the existing Law, and to prove that all the restrictions and orders hitherto passed had wholly failed in remedying the evil, he would read some passages from certain papers that had lately come before Government, which would shew that there was as much oppression at the present day as ever there was.

The first communication from which he would read, was a Memorandum by the Deputy Consulting Engineer to Government dated the 12th of March 1856, reporting a complaint made by Mr. Sibley, a gentleman employed on an extensive section of the Railway. The Deputy Consulting Engineer writes:—

"It would appear that, since the location of Troops in this District, the Police have been and still are in the habit of seizing, for their service, carts employed by the Railway Agents for the carriage of coal, ballast, lime, &c., &c. Mr. Sibley states"—and this was very important—"that this practice not only deprives him of the use of the actual number of carts seized, but of a great many others also which are secreted in villages by their owners who are unwilling to have their carts thus seized; and thus, at one time, the works were nearly stopped. Mr. Sibley further states that he has communicated with the Civil Authorities on the subject, but that the evil complained of has not been remedied. Indeed, laden carts are still constantly seized, and their contents deposited on the road-side."

He (Mr. Grant) would ask Honorable Members to judge what the effect of seizing laden carts, and depositing their contents on the road-side, must be on the traffic of the country. In this case,

the contents were coal, ballast, and lime: in another, the communication relating to which he would presently read to the Council, the contents were rice. But in other cases, the contents might be indigo, or silk; and, as the Law now stood, those valuable articles of produce might be taken out of carts whilst passing along the road, and left on the road-side to take care of themselves.

The next communication from which he would read a passage, was a Letter from the Bengal Chamber of Commerce, dated the 20th of Dec. 1854. The letter said:—

"The Committee of the Chamber of Commerce has been urged to submit through you to his Honor the Lieutenant Governor the hardship and loss to which Merchants and Traders generally are exposed by the present authorised system of impressing carriage for the public service. A very recent instance of actual severe loss therefrom has been brought to the notice of the Committee by a highly respectable firm of this City, Messrs. Gouger, Jenkins and Co., who allege that a number of carts laden with rice belonging to them were seized by order of the Collector of the 24 Pergunnahs, and the rice taken off the carts in the above officer's cutcherry compound. The rice having been secured for immediate shipment, the delay, independent of expense and annoyance in securing other means of conveyance, exposed the Firm to loss in freight; for, being unable to complete the shipment by the vessel in which the necessary tonnage had been secured, a higher rate was required by other vessels, the difference in excess being pure loss to the Firm."

That was the view which independent people took of the Law, and the manner in which they felt the oppression. He would now read a Report submitted in July 1854 by Mr. Samuells, showing the view which a most intelligent and experienced officer of Government takes of the subject:—

"My attention has been frequently directed to the vicious system which has long prevailed of compelling cartmen to take service with regiments about to march. It is not many months ago since a requisition was made on the Collector of the 24-Pergunnahs, for carriage on account of a regiment at Barrackpore which had received order to march. The Nazir to whom the execution of the order was entrusted knew well that, if any hint of the order got abroad, his purpose would be defeated, the wheels of the hackeries would every where have been thrown into the tanks, or hid in the jungle. He accordingly kept his instructions secret, and occupied all the bridges leading into Calcutta about an hour before daybreak, by which stratagem alone he was enabled to seize a sufficient number of hackeries, before his proceedings got wind." "For two days after this, not a hackery was to be seen in the neighbourhood of Calcutta. The assistance of my Police was required to protect the Nazir's peons from the cartmen and their friends: and after all, a number of these cartmen attacked the sepoy guard which was escorting them to Barrackpore; and" (he, Mr. Grant, was happy to say) "succeeded in effecting their escape."

He thought he need not say more to shew the practical working of the system which now obtained, and the failure of the measures which had hitherto been taken to palliate its evils. Of the letters which he had read, one was written on behalf of a respectable European Firm, and another on behalf of a great English Company. If this happened to wealthy Companies and respectable European Firms, what was the poor Indian Trader to expect? It was impossible to imagine that the evil of the existing Law stopped with the hackerymen. Not only did it affect them, but it was a serious impediment to the trade of the country. The evil of the system being ascertained, the only question which remained was, is it necessary? If he were trying to bolster up a bad case, he might claim the example of Madras, in favor of abolishing the existing Law; for a Law taken from the Bengal Law of 1806, was once in force in that Presidency, and was repealed by the Madras Government who stated that they proposed to adopt other measures for providing carriage and supplies for troops. He thought it very possible that the system of Regimental Bazaars which obtained in Madras might have done away with objectionable interference in regard to supplies; but he knew that, practically, this was not the case in regard to carriage. The impressment of carts, and the oppression consequent upon it, existed in practice in Madras as much as in Bengal. But although he had no actual example of the supply of carriage without impressment that he could fairly quote in support of his position that impressment was not necessary in Bengal, he could refer to cases in which impressment was found to be unnecessary in Bengal, so strictly analogous that they were almost identical. First as to the impressment of cattle. The Law said

that, whenever a detachment of troops, or a single corps, was ordered to move, the Commanding Officer must give timely notice to the Collectors and Magistrates of the districts through which the troops were to pass; and that, on receiving such notice, the Collector and Magistrate of each district should proceed to provide carts, bearers, coolies, boatmen, and bullocks. The Civil Authorities had no power to provide, and in fact they did not provide anything in the way of carriage beyond these five things. It was true that carts were used very largely for the service of troops on the march; but camels also were used very largely for the same purpose; and yet there was no Law whatever authorizing Collectors or Magistrates to impress camels when they might be required for the service of troops. Nevertheless, he had it on the best possible authority, that of Colonel Ramsay, the Commissary General, that there was no difficulty whatever in procuring camels when they were wanted for troops, but that, on the contrary, the owners of camels came to him and his Commissariat Officers of their own accord, and begged and prayed to have their cattle employed. If this was the case with camels, why should it not also be the case with carts? Some gentlemen talked a good deal about combinations. He believed that the fear of combinations was a bug-bear; and of all bug-bears, he believed this combination bug-bear had most timid and unsound legislation to answer for. Owners of camels did not combine against the Government, and against their own interests; for if they refused fair work at fair pay, their own interests suffered. Then, why should it be supposed that cartmen would combine against Government, and against their own interests?

Next, as to boats. In one of the papers before him, the Lieutenant Governor of Bengal had very well observed that there was no more reason for impressing carriage for troops ordered to march in the interior of the country, than there was for impressing vessels for troops ordered to cross the sea—as, for instance, when ordered to proceed to Rangoon. But who was there that would say that, when troops are required to be sent to Rangoon, vessels in the Hooghly must be impressed by Government, at rates of hire fixed by Government, to be loaded down to the gunwales, and, when taken up only for Rangoon, to be carried on from thence perhaps to China? And yet it is as necessary for the public interest that troops should go across the sea when they are required across the sea, as that they should proceed by river when they are required to do so. If it would be such flagrant and unnecessary injustice, as would make people's hair stand on end, to treat a ship of Mr. Green or Mr. Smith in the manner he had described, he would ask Honorable Members how they could distinguish between such an act, and treating in a precisely similar manner the cart of a poor man who, besides his cart and his bullocks, and the rag round his middle, had probably nothing in the world to his name? If the Government could rely upon the open market for sea transports for their troops, he could not understand why they could not also rely upon the open market for boats for internal navigation when required by their troops. He was sure that there must be in Bengal at least a thousand river-boats available, for one sea-going vessel available.

Again, as to supplies. No doubt, the Government must take care that the Sepoys of a marching corps should get enough of rice and *dholl* when they arrive at each halting-place. The necessity for making such provision is absolute. But so also is the necessity that, when a European corps marches, there should be enough of beef and bread for the soldiers at each halting-place. Yet there was no Law which authorized any Civil Power to provide beef and bread by compulsory means for European troops on the march. In that particular, the Commissariat were left to make their own arrangements. Now, there was no difficulty in any part of India in procuring as much rice and *dholl* as a Native Regiment could require; but there was some difficulty in many parts in procuring large supplies of beef. Nevertheless, as to these articles, as there is nobody else to do the proper work of the Commissariat Department, the Commissariat Department, *ex necessitate rei*, do their own work themselves; and the European soldier finds

his dinner ready for him at the halting-ground, as certainly as a London Alderman finds his dinner ready for him at home, on his return from his counting house. It was for those who object to a change of system, to make a distinction between beef and rice, between river-boats and sea-boats, between bullocks and camels. He could imagine no distinction that would hold water for a moment.

He feared he had already said too much upon the subject; for he believed that the Council would readily agree with him, both with respect to the oppressive nature of the existing system, and to the want of necessity for it. The only persons who might be inclined to object to the abolition of the system, were the Commissariat and Regimental Staff. But even with such objectors, he had an answer that would close the discussion—the thing *must* be done. The Governor General in Council had decided that it shall be done.

The principle upon which he, in this Bill, proposed to carry out the Resolution of Government, was to limit the interference of the Civil Power stringently to exceptional cases, which are specified in the Bill; and when those exceptional cases should arise, he proposed that impressment should be permitted, subject to certain restrictions, which, though they could not wholly avoid the evils of impressment, would, he believed, palliate them in practice to a much greater extent than the rules hitherto in force had done.

Section I of the Bill repealed Sections II and VIII and Clause 7, Section IX of Regulation XI of 1806 of the Bengal Code. Section II of that Regulation required Officers commanding detachments ordered to march, to give early notice to the Collectors and Magistrates of the districts through which the troops were to pass; and Section VIII authorized travellers, whether European or Native, to require the assistance of Police officers in procuring for them means of transport or supplies during their journeys. He believed that this last provision was very much a dead letter—perhaps, it was wholly so; but still he thought that so objectionable a Law ought not to be permitted to stand in the Statute Book.

Section II of the Bill prohibited Collectors, Magistrates, and their subordinate officers, from doing that which they were now compelled by Law to do, —except in the rare cases for which subsequent Sections provided.

Section III was a penal Section. By it, every subordinate Revenue or Police officer will be liable to three months' imprisonment and fine, who impresses or attempts to impress contrary to the provisions of the Act, or otherwise without authority of Law. This Section would go farther than the leading object of the Bill; for it would apply to the unwarranted impressment of laborers for any purpose whatever. He knew that, at Madras, public works were carried on more or less by means of forced labor. Until lately, the same might be said of Scinde; but in that Province Colonel Jacob, to his very great honor, had lately abolished the system, and the public works were now carried on there by voluntary labor quite as well as before. He (Mr. Grant) did not know that the system of forced labor was in operation any where in Bengal; but he knew that it was nowhere in Bengal warranted by Law; and this Section would make the practice penal.

Section IV was his first exception. It empowered the Government of India, the Lieutenant-Governors of Bengal and Agra, and the Chief Civil officers in Provinces under the immediate administration of the Government of India, by an order stating that a case of emergency has arisen, and that it is impossible, even by the offer of double the common rates of hire and prices, to obtain the necessary carriage and supplies, to authorize a Commanding Officer to call upon the Civil Power for assistance; in which case Collectors and Magistrates shall proceed in the manner now required by the Regulation, when called upon under the repealed Sections; and the existing rules will all apply.

Section V was his second exception. It was obvious that emergencies might suddenly arise in distant parts of the country, when there might be no time to obtain an order from the local Government. As a provision for such cases, he proposed to enact that, if it is certified to a Collector or Magistrate by a Commanding Officer, that troops under his command have been ordered sud-

denly to take the field, or to proceed to some place in order to preserve the peace of the country, and that it is impossible, even by the offer of double rates, to provide the necessary carriage and supplies in time; also that there is not time to obtain the order described in Section IV—then the Civil Power shall act as at present, and the existing Regulations shall apply to all concerned.

As to all cases not included in these two exceptions, the present Regulations were wholly abolished.

He had no fear that the first of these exceptions would ever be so abused as to be made the rule. He knew what the feelings of the Governor-General in Council, of the Lieutenant-Governor of Bengal, and of the Lieutenant-Governor of Agra were on the subject; and he had no fear that they would ever issue an order for impressment where they did not see an absolute necessity for it. Nor did he think that there was much danger of the second exception being used so constantly as to become the rule. He was aware, however, that it often happens that, in a Law of this sort, the exception becomes the rule; and he hoped that Honorable Members would look jealously at the Sections which provide for these exceptions, and would, if necessary, so amend them as to avoid this common cause of failure.

The provision upon which he most relied for security against the failure of the Act, in this manner, was a provision for the payment of double rates, whenever the interference of the Civil Power is called for. He thought that by this provision, he should call in the aid of the Military Auditor General to the proper working of the Act: for, of course, the double rate would not fall on the Sepoy; and the Military Auditor General would take care to see that payments at double the prevailing rates were not imposed upon the Government, without an actual necessity.

The Bill provided that, in all disputes, in cases of impressment, the Collector should be the officer to settle the disputes.

He now came to the provisions by which he proposed to check the evils of the present system of impressment when it should be necessary to resort to that measure. The first of these evils was the occasional inadequacy of the rate of hire fixed. He had mentioned one reason why he proposed that double rates should be paid wherever carts might be impressed under the Act. Another was, that it was only just to the cartmen, that they should be paid extra when employed against their will. The mere fact of a sudden call for carts in a particular district, naturally raised the market rate of hire for carts in that district at the moment. If time can be given for bringing in carts from a distance, there is no necessity for impressing at all. Of course, it would be impossible to expect Government to pay double rates on all occasions of the movement of troops. But under this Bill, the necessity of impressing would occur very rarely; once perhaps in several years; and it mattered as nothing to Government what it paid on such rare occasions. On the other hand, it mattered a great deal to the pressed cartman. His business may require him to go to the East, when he is compelled to march off to the West. The ordinary rate of hire in the district, when no extraordinary demand for carriage exists, would be but poor payment in such a case.

The occasional inadequacy of the fixed rates was but one of the evils of the existing system; and one which was very far from the greatest evil. A very much greater evil was that the whole hire which the Government paid did not reach the hands of the hackerymen. By this Bill, he proposed that, when carts are impressed, instead of the Regiment for whose use they are impressed paying the cartmen, the Civil Officer who impresses them should pay them. It would then be the business of that Officer to obtain repayment from the proper quarter. The Civil Officer could wait; but a poor hackery-man could not wait for his hire, while men in office were tying up innumerable bundles of paper in red tape.

Another evil of the present system was that it was the uniform practice to overload impressed hackeries; in consequence of which, the hackery breaks down, or the bullocks are killed, and the owner is ruined. He had provided by this Bill that the Collector should fix before-hand the maximum weight to be carried by each cart, being the weight usually carried by such cart; and that

Mr. Grant

if any load in excess should be put upon it in spite of the remonstrance of the cartman, a day's extra rate of hire should be paid to him for every day on which the load was in excess.

Another very great evil of the existing system was that impressed carts are generally taken to a much greater distance than there is any necessity for taking them to. The existing Law provides that persons impressed should be at liberty to return to their district from the first Police station in the next zillah, unless they should have engaged to the contrary; but in practice, constantly, they are carried on from zillah to zillah in the service of troops until the Commanding Officers can provide themselves with others which they like better. On occasions of impressment, it is every Civil Officer's duty to provide conveyance through his own district. He, therefore, had provided that whenever a cart is retained, otherwise than by agreement, beyond the first halting-place without the jurisdiction of the Civil Officer under whose authority it was impressed, a treble instead of a double rate of hire should be paid for the time during which it may be so retained.

The existing Law provides that, in each case of impressment, the Collector of every zillah through which a detachment passes shall depute a respectable native officer to accompany the troops through his jurisdiction for the purpose of aiding in procuring the necessary supplies, and of facilitating the march. In practice, however, this respectable native officer is often represented by a rascally Peon on four Rupees a month. This Bill provides that, when a Collector issues an order for impressment under the Act, he shall be held strictly responsible for the selection of a really respectable native officer to accompany the troops, and that the wages paid to such officer, in addition to the authorized travelling allowance for Revenue officers of his class, shall in no case be at a rate of less than one Rupee a day, leaving it to the Government to give as much more as they like.

He had confined the operation of this Bill to the Presidency of Fort William in Bengal. He would leave it to the Honorable Member for Madras to take into consideration the provisions of this Bill, and to communicate, if he should think fit, with the Madras Government as to the expediency of extending these or any similar provisions to Madras. He knew that the abuses complained of in Bengal also existed to a great extent in Madras; and it would be for the Honorable Member to determine whether this Bill should be made applicable to that Presidency by amendment in Committee, or whether he should bring in a separate Bill.

He (Mr. Grant) would leave the same course open to the Honorable Member for Bombay. The existing Law for Bombay was very much better than the existing Law for Bengal; for it authorized the Civil Power there to interfere only in emergent cases. He doubted whether that restriction was always observed in practice; and if the Honorable Member for Bombay should be of opinion that the state of things in that Presidency required a more effective Law than it now has on this subject, he (Mr. Grant) was sure that the Honorable Member also would take this Bill into consideration, with a view to doing what may be necessary for the Bombay Presidency.

With these observations, he should move the first reading of the Bill.

The Bill was read a first time.

BOMBAY TOBACCO DUTIES.

The Order of the Day for the third reading of the Bill "to amend the Law relating to the duties payable on Tobacco, and the retail sale and warehousing thereof in the Town of Bombay" being read—

MR. LEGEYT moved that the Bill be recommitted.

Agreed to.

A verbal amendment was made in the 10th Section.

Section XIV, as to which there had been a discussion and division at the last Meeting, provided that monthly returns of stock should be made by retail dealers.

MR. LEGEYT said, he might state, for the information of the Council, that he had communicated with the Government of Bombay respecting this Section during the week, and that they had expressed a strong wish that it should be retained.

An amendment was made in the Interpretation Section.

The Bill, having been reported, was read a third time and passed.

ORIENTAL GAS COMPANY.

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill "for incorporating the Oriental Gas Company;" and that the Committee be instructed to consider it in the amended form in which the Select Committee had recommended it to be passed.

In doing so, he said he thought it necessary to say a few words in explanation of the delay which had taken place in proceeding with the Bill, and of the course which he now proposed taking with respect to it.

It would be in the recollection of the Council that, when the Oriental Gas Company entered into negociation with the Municipal Commissioners and the Government of Bengal for lighting the town with gas, they stipulated for an Act of Incorporation similar to that of the Assam Company. To give effect to that stipulation, a Draft Act was prepared by the Solicitors of the Company on the model of the Act for the Assam Company, and was revised by the Law Officers of the Government. The Draft Act was forwarded to him by the Government of Bengal, with the opinion of the then Advocate General to the effect that the Bill was unexceptionable in point of Law. He accordingly introduced the Bill in the form in which it was now before the Council; it passed through the first and second stages; and was referred to a Select Committee.

In considering the Bill in Select Committee, it was thought that many of its provisions were scarcely suitable to a Company which was essentially an English Company, and of which the Directors, and for the most part the shareholders also, were resident in England. But as any inconvenience arising from that circumstance would affect the shareholders of the Company rather than the Public, the Select Committee did not think it necessary to propose any material alteration. About the same time however, the Board of Direction in London discovered that the inconvenience he referred to might arise, and wrote out to their Agent in Calcutta, who, under their instructions, requested that the Bill should not be proceeded with in its present form, but that several Sections relating to the internal management of the Company, to the holding of Meetings, the transfer of shares, &c. should be expunged. Upon this, he (Mr. Currie) communicated with the Advocate General. Mr. Ritchie was of opinion that the provisions of the Bill could not but occasion much confusion. He observed that the omission of the Clauses objected to by the Directors

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"Will doubtless remove much of the difficulty that may arise, clashing between the conflicting provisions in this country and at home to which I have referred. But at the same time, if they be omitted, the Company will continue so essentially and exclusively an English one, and will be so utterly unfit for the investment of Indian capital, that I presume the Legislature would scarcely think it advisable to legislate for it at all as an Indian Company, or to do more than to give it the powers, and subject the persons employed by it in this country to the penalties, contained in the latter part of the Bill—that is, from Section XXI to the end."

Mr. Ritchie proceeded to remark in detail on the Sections which the Directors proposed to omit. He thought that some of them might be omitted, but that others must be retained, if the Company were to be incorporated in India.

In consequence of these difficulties, it had been arranged with the Agent in Calcutta that the Company should forego the idea of incorporation in India; but before any further steps were taken in the matter, the Agent asked time to make another reference to the London Board. In the mean time, the Limited Liability Act of the last Session had been passed, and the Company had obtained incorporation as a limited Company under that Act. The Directors were now willing and desirous that all the incorporating clauses should be struck out of this Bill, and that its scope should be restricted to the provisions necessary for giving them such powers and facilities for carrying on their business as are usually given to Gas Companies in England by the General Gas Companies Act. He therefore proposed to move in Committee that the whole of the first part of the Bill should be omitted, and that the Title should be altered

from "A Bill for incorporating the Oriental Gas Company" to "A Bill to confer certain powers on the Oriental Gas Company, Limited."

With these observations, he begged to move a Committee of the whole Council on the Bill as amended by the Select Committee.

Agreed to.

Section I being proposed—

MR. CURRIE said, he had been advised that provisions similar to those of Section XVI should be retained, and he proposed, therefore, to insert a Section containing such provisions at the end of the Bill, and also a Section similar to Section XX The Sections which he proposed to introduce would be out of place where Sections XVI and XX now stood.

He should therefore move that all the Sections I to XX be left out of the Bill.

Agreed to.

Section XXI was passed after an amendment.

Section XXII was passed as it stood.

Section XXIII was passed after verbal amendments.

Sections XXIV to XXVI were passed as they stood.

Section XXVII was passed after an amendment.

Section XXVIII empowered the Company to enter into contracts for lighting streets, &c.

MR. PEACOCK said, if the Company had not this power by their Deed of Incorporation under the English Limited Liability Act, this Council, in passing the present Section, would be giving them a power which the shareholders had not given them. If they had the power by the Deed, it was not necessary to give it to them by this Act He should, therefore, suggest that the Section be left out.

The Section was then put and negatived.

Section XXIX empowered the Company to let meters, and exempted meters from distraint "for rent or revenue due on the premises" where they might be used, or under any Civil process, or any proceeding in Insolvency. The first part was omitted for the "same" reason as the previous Section, and the latter part was passed after an amendment, on the motion of Mr. Currie, by which meters will be protected also from distraint by the Municipal Commissioners "for any rate"

Section XXX was passed as it stood.

Section XXXI was passed after an amendment.

Sections XXXII, XXXIII, and XXXIV were passed as they stood

Section XXXV was passed after an amendment.

Sections XXXVI to XLII were passed as they stood.

MR. CURRIE moved that the following new Section, which was the original Section XVI modified so as to correspond with the phraseology of the Joint-Stock Companies Act 1856, and of the corresponding Bill recently introduced into this Council, be inserted after Section XLII:—

"A copy of the original Deed of Association of the said Company, and of every other instrument registered under the said Joint-Stock Companies Act 1856 as constituting the Regulations of the said Company, and a copy of every special Resolution of a General Meeting, whereby any change shall have been or at any time shall be made in the Regulations of the said Company, shall be kept at the office of the said Company in Calcutta, and shall there be open to the inspection of all persons during the usual hours of business of the said office, and a copy of such original Deed of Association, and of every other such instrument, and of every special Resolution as aforesaid, shall also be deposited by the said Company, as soon as it can be done after the passing of this Act, or after the making of any such special Resolution hereafter to be made, in the office of the Registrar of Joint-Stock Companies, or, if there be no such Officer, in the office of the Keeper of the Records of the Supreme Court of Judicature at Fort William, and shall there be filed; and an examined copy of any such filed copy as aforesaid, certified by and under the hand of the Registrar of Joint-Stock Companies or of the Keeper of the Records of the said Supreme Court, shall be good and sufficient evidence of each such original Deed, instrument, or special Resolution in all actions, suits, and proceedings whatsoever, whether Civil or Criminal, to be had in any Court of Justice, or before any Magistrate, or Revenue or other Officer, and whether acting judicially or in any proceeding preliminary to a judicial enquiry throughout the Territories of the East India Company."

Agreed to.

MR. CURRIE moved that the following new Section, which was the original Section XX modified, be inserted after the above:—

"All services of mesne or other process, and all notices whatsoever, which, by Law or by the practice of any Court wherein the said

Company shall sue or be sued, are required to be made, served, or given for any purpose whatsoever to the said Company, shall and may be made, served, and given, in addition to all ways and means by which the same may otherwise be legally made, served, and given, upon or to the Managing Agent for the time being of the said Company resident in Calcutta, or by leaving the same addressed to such Managing Agent at the office in Calcutta of the said Company."

Agreed to.

Section XLIII laid down a procedure for the recovery of penalties and damages. The greater part was omitted on the motion of Mr. Currie, as being unnecessary under the provisions of the new Police Act.

Section XLIV was passed after verbal amendments.

Section XLV was passed after an amendment.

Section XLVI gave power to Justices of Peace or Magistrates to summon witnesses, and provided the penalty for not appearing.

MR. CURRIE said, it was not necessary to retain this Section, as the new Police Act provided the procedure in such cases.

The Section was put and negatived.

Section XLVII, which related to convictions, was also negatived for the same reason.

Section XLVIII limited the operation of the Act to the 31st of December, 1876.

MR. CURRIE said, as the incorporation Clauses had been struck out, there was no necessity for limiting the operation of the Act. It appeared to him that the Section should be omitted.

The Section was put and negatived.

Section XLIX was passed after amendments.

On the motion of Mr. Currie, amendments were inserted in the Preamble which made it conform to the Bill in its altered shape.

The Title was passed after the amendment indicated by Mr. Currie.

The Council having resumed, the Bill was reported.

NOTICES OF MOTIONS.

MR PEACOCK gave notice that, on Saturday next, he would move the second reading of the Bills to simplify the Civil Code of Procedure in the several Presidencies and in the North Western Provinces.

BOMBAY TOBACCO DUTIES.

MR LEGEYT moved that Mr. Grant be requested to take the Bill "to amend the Law relating to the duties payable on Tobacco, and the retail sale and warehousing thereof in the Town of Bombay" to the Governor-General for his assent.

Agreed to.

NOTICE OF MOTION.

MR. CURRIE gave notice that, on Saturday next, he would move the third reading of the Bill "to confer certain powers on the Oriental Gas Company, Limited."

The Council adjourned.

Saturday, February 7, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. Major General J. Low,	C. Allen, Esq.,
Hon. J. P. Grant,	P. W. LeGeyt, Esq.,
Hon. B. Peacock,	E. Currie, Esq.,
D. Elliott, Esq.	and
	Hon. Sir A W. Buller.

MUNICIPAL ASSESSMENT (BOMBAY.)

THE CLERK presented to the Council a Petition of the Bombay Chamber of Commerce against those Sections of a Bill (about to be laid before the Council) "to amend and consolidate the laws relating to the Municipal Taxes in the Islands of Bombay and Colaba," which propose the levy of Town dues on Merchandize and Shipping.

MR. LEGEYT moved that the Petition be printed.

Agreed to.

CATTLE TRESPASS.

The following Message from the Governor-General was brought by Mr. Peacock and read:—

MESSAGE No. 96.

The Governor-General informs the Legislative Council that he has given

his assent to the Bill which was passed by them on the 24th January 1857, entitled "A Bill relating to trespasses by Cattle."

By order of the Right Honorable the Governor General.

(Sd.) CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 31st Jan. 1857.

HINDOO POLYGAMY.

THE CLERK also presented to the Council a Petition of Hindoo Inhabitants of Dacca praying for the abolition of Hindoo Polygamy.

MR. GRANT moved that the Petition be printed, and took that opportunity of saying that he hoped very shortly to introduce a Bill on the subject.

The Motion was agreed to.

BOMBAY CENSUS.

MR. LEGEYT presented the Report of the Select Committee on the Bill "for taking account of the population of the Town of Bombay."

CIVIL PROCEDURE (BENGAL).

MR. PEACOCK moved the second reading of the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bengal."

MR. GRANT said, he should have been glad if he could have given a silent vote in support of the Motion for the second reading of this Bill; but he could not do so without laying himself open to misconstruction. He thought it entirely proper, considering the circumstances under which the Bill had come before the Council, that it should be referred in its integrity to a Select Committee for mature consideration and report; but after the best consideration that he could give to the subject, he had strong objections to a large part of the measure—to so large a part of it, that, if it had been an ordinary Bill, and had been brought forward in the ordinary course, he should have felt it his duty to object to the second reading.

The part of the measure to which he objected, had no reference to Procedure. He had not given much attention to the part relating to Procedure; but he had seen that others, who were infinitely more qualified than himself to form an opinion respecting this part of the measure, and who had fully considered it, approved of it, and he had no doubt that, with some amendments perhaps, it would be a very great improvement upon the existing system of Civil Procedure. But the part to which he objected was more important than Procedure—it was that which regulates the system of tribunals, and of appeals.

If we have good Courts, whatever be the system of Procedure, we shall have good decisions; but if we have bad Courts, whatever be the system of Procedure, we shall often have bad decisions. He had always felt that the great practical objection to our system was the deficiency of the Courts of original jurisdiction—their deficiency, not only where cases of small amount are tried, but also where cases of the greatest possible importance are tried. This Bill does not improve, or attempt to improve, our Courts of original jurisdiction in the least degree. It rather makes them worse. It leaves the Moonsiff's Court exactly what it is now, and it greatly enlarges the pecuniary limitation of his jurisdiction. It leaves the Court of the Principal Sudder Ameen exactly what it is now; and it leaves the Court of the Zillah Judge exactly what it is now. So far from improving the system of original jurisdiction in these two Courts, its practical effect would be to make it worse, by throwing the whole original business on the inferior of the two Courts; whereas now the superior Court can try, and does try, some of the more important original suits. By throwing on the Zillah Judge alone the whole of the Zillah appeals, and thus overwhelming him with appeal business, the Bill would place it quite out of his power to try a single case in the first instance. This would make our existing system worse in that very part of it which is most defective, and gives most dissatisfaction now, and which, therefore, it should be our chief endeavor to make as much better as we can.

Then, as to the system of appeals. In all suits above 1,000 Rs., the Bill

provides that the appeal shall be to the Sudder Court. He supposed it was imagined that this provision would do away with any objection to the Bill on the ground that it leaves the tribunals of first instance unimproved, inasmuch as it would bring their decisions in all cases above 1,000 Rs under the immediate supervision of the Sudder Court. He was of entirely a different opinion. He thought that the appeal of a case upon the facts from a Court which has heard the evidence to a Court which does not hear it, was no proper appeal at all. He thought that every important case ought to be tried in the first instance by a Court competent to give a decision upon the facts which would satisfy the Public. That was not provided, or attempted to be provided, by this Bill.

To the appeal work which the Bill would throw on the Sudder Court, he had two objections. It appeared to him almost an absurdity to send up a case of 1,000 Rs. to be decided by the Sudder Court on the whole merits in regular appeal. A case of 1,000 Rs. may have as much matter in it as a case of 5,000 Rs., and its decision may take up as much time. It was a common occurrence for the hearing of a regular appeal in the Sudder Court to last two days. Imagine a case for 1,000 Rs., taking up the time of the Sudder Court, or the High Court which may replace it, for two days, with an English Lawyer and a Native Vakeel—for it will come to that—on each side! The fees of the Lawyers and the Vakeels on both sides would eat up as much as the whole value of the case.

His second objection was that the Bill as presented throws so much work on the Judges of the Sudder Court, or the High Court—whichever it may be—that it would be impossible for the present number of Judges to do it. The scheme recommended by Her Majesty's Commissioners proposed that the High Court should consist of the three Judges of the Supreme Court, and the five permanent Judges of the Sudder Court. Now, there was hardly one of these Judges who had not intimated his opinion that the work proposed to be assigned to them would be too much for this number. He himself believed that the work cut out forthe High Court would take up the time of at least sixteen Judges. For sixteen Judges, we have not the money; and for sixteen Judges, we have not the men. It was not always easy to get five men in the Service, who had worked their way up from the lower ranks, and had acquired the requisite knowledge and judicial experience, holding such an eminent position as Judges, as ought always to be the qualification for the Sudder Court; and he was quite certain that, if we tried permanently to get a very much larger number, we should often fail, and the men selected as Sudder Judges would often not command the confidence and respect which every Sudder Judge ought to command.

He did not wish to go into the Bill at any great length. He only wished to explain to the Council the fundamental objections which he felt to an important part of it. There was one minor objection, however, which he would specify. By this Bill, a Judge of the Sudder Court or the High Court would never know anything of the quality of the work of the Zillah Judges. It provided, indeed, that, in original suits, the appeal from the decision of the Zillah Judge should be to the Sudder Court; but in practice it was certain that a Zillah Judge never would, and never could, try a single original suit. All his business would be appellate; and from his decisions in that business there is no appeal. Therefore, we should have in the Zillah Judge a man in the happy position of one as to whom, whether he does well or whether he does ill, whether he does something or whether he does nothing, nobody above him would know. That is not the position in which a Zillah Judge, on whom the good working of the judicial administration of a whole district depends, ought to be placed.

He would very shortly sketch a system of tribunals and appeals which he very much preferred to the one now proposed. He would give strength where we were weakest. He would improve the Courts of original jurisdiction in the Mofussil, and so improve them that the most important cases should always be tried originally by Courts whose decisions the Public would respect. The plan which he proposed to adopt was, he believed, the plan of Mr.

Mr. Grant

John Colvin, and had been approved by the whole of the Judges of the Sudder Court. A judicial plan of Mr. Colvin's came before this Council under good auspices; for, great as had been the services of that eminent gentleman in every office that he had filled, and great as he (Mr. Grant) hoped they would continue to be in the high office which he held at present, he never had done, and no one ever could do, better service than he had done during the few years that he sat on the Bench of the Sudder Court of Bengal.

The plan which he (Mr. Grant) proposed should be adopted was that there should be a Chief Judge of every Commissioner's division, who would hold in the Judicial Department a rank corresponding with that which the Commissioner holds in the Executive Department. He should go on circuit to each district of his division, and, sitting in full Bench with the Judge and Principal Sudder Ameen of the district, should decide all original suits of great importance. These should be so decided once for all, and there should be no appeal on the facts. The decisions might be open to review, and occasionally there might be new trials; but his plan would do away with the system, which this Bill proposed to continue, of allowing appeals upon the facts from a Judge who hears the evidence to a Judge who does not hear it.

In the same manner, the more important appeals from the lower Courts of each district should be tried by a Bench of more than one Judge, in which the Chief Judge of the division should always preside. By this means, he (Mr. Grant) thought that we should improve our whole system of original jurisdiction immensely, and improve at the same time the Mofussil appellate jurisdiction to a very great extent.

The question of how to bring forward his counter-project for discussion, had given him a little trouble. He had never thought of voting against the second reading of this Bill, for he believed it to be, on every account, prepared as it had been, a most proper measure to be referred to a Select Committee of the Council. But as his project would in no way interfere with the procedure provided by this Bill, perhaps the Council would allow him to introduce, on a future occasion, a Bill to regulate our tribunals and system of appeals as he would have them regulated. That Bill might be read a first time, and, unless the Council should manifest any strong objection to its principle, it might be allowed to be read a second time, and referred to the same Select Committee which would be appointed to consider the present Bill. This might be done without committing any Honorable Member to the measure, any more than he (Mr. Grant) was committed to the present Bill. The Select Committee might then report upon both projects, and, at the same time, upon any other project which any Honorable Member might think fit to propose.

He had made these observations merely to set himself right with the Council, and to make it known to them that, in giving his vote for the second reading of this Bill, he did not commit himself to that large and important portion of the measure upon which he had remarked. On the contrary, he committed himself to a strong opposition to it.

MR. PEACOCK'S motion was carried, and the Bill read a second time.

CIVIL PROCEDURE (N. W. PROVINCES.)

MR. PEACOCK moved the second reading of the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in the North Western Provinces."

The motion was carried, and the Bill read a second time.

CIVIL PROCEDURE (MADRAS.)

MR. PEACOCK moved the second reading of the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Madras."

The motion was carried, and the Bill read a second time.

CIVIL PROCEDURE (BOMBAY.)

MR. PEACOCK moved the second reading of the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bombay."

MR. LEGEYT said, he desired to make a few observations upon this Bill

before it was read a second time, with the view, not of opposing the second reading, but of drawing attention to some portions which struck him as of importance to be placed before the Council and the Public at the present stage.

The Presidency of Bombay had had the advantage of possessing a Code, and a tolerably good Code, of Civil Procedure for the last thirty years. It had been his lot to be employed during nearly all those years in administering that Code, and he had found it to serve its purposes with tolerable efficiency. The Code now proposed for Bombay was not, in most material respects, different from the first ten Regulations of the Bombay Code of 1827. It made some alterations, however, in certain particulars, and a few additions; but he thought that it still left some defects of the existing Regulations unremedied.

In unison with the Honorable Member who had introduced this Bill, he would not now attempt to open the question of the constitution of the Sudder Courts; but he must say it did appear to him that, if the amalgamation of the Supreme and Sudder Courts recommended by Her Majesty's Commissioners were not carried out, it would be desirable, in promulgating to the country at large a new Code of Civil Procedure, to provide that some changes should be made in the present constitution of the Sudder Courts. What those changes should be, might hereafter be determined; but if this Code should pass into Law as it stood, the first fifteen Sections of Regulation II of 1827 of the Bombay Code would still remain; and they, he was disposed to think, might be improved upon, and he hoped that the silence of the Bill in this behalf would not prevent suggestions being made to the Select Committee.

The Bill did provide a new constitution for Zillah Courts. It provided that there should be three grades of Judges in each zillah or district—Zillah Judges, Principal Sudder Ameens, and Moonsiffs. At present, in the Presidency of Bombay, subsidiary to the Courts of the Zillah Judges, were two classes of Courts presided over by Assistant Judges. By this Bill, these subsidiary Courts were abolished. This was a very important alteration, and one which he considered to be of very questionable expediency. It would abolish a class of Courts which had existed at Bombay he believed since 1796, and which formed the only school of training which Bombay had for Zillah Judges. If they were abolished, we should have men put into the office of Zillah Judges and Sessions Judges who had never probably decided any suit involving questions of Law, or performed any duty which qualified them to sit as Presidents in Courts of Justice. And not only would these men come in as Presidents of Courts of Justice, but every case which they would have to decide would be a case brought up on appeal from a Judicial Officer who had probably been twenty or thirty years employed in the administration of Justice, and who, nobody could say, was not better qualified to deal with the case than an Officer without any judicial experience whatever. He (Mr. LeGeyt) believed that this Code would restrict the decision of appeals to European tribunals; and it appeared to him that the Council ought carefully to consider whether it would be right to abolish all these subsidiary Courts. He believed that the same observation applied to Madras where there were also two classes of Assistant Judges' Courts.

Then, again, the Bill abolished one class of Native Courts At present, we had the Courts of Principal Sudder Ameen, Sudder Ameen, and Moonsiff. The Bill abolished the Courts of Sudder Ameen. He also questioned the advisability of that measure. The pay of a Sudder Ameen was considerably higher than that of a Moonsiff. The office was, therefore, an object of ambition to Moonsiffs, and was given to deserving officers of that class as a reward for good service. The same stimulus to meritorious discharge of duty might, it is true, be supplied by forming several classes of Moonsiffs; but he was sure that those who now held the office of Sudder Ameen, would feel it a great grievance to be reduced to the grade of Moonsiff. After all the Bills relating to Civil Procedure were published, he hoped that communications would be received from the different Presidencies which would enable the Select Committee to come to a right conclusion upon this point.

Mr. LeGeyt

By Section 3 of Chapter II, it was enacted that "the appointment, suspension, and removal of the Zillah Judges, Principal Sudder Ameens, and Moonsiffs shall be regulated by such rules and orders as the Governor General in Council shall, from time to time, pass." This provision certainly was a new feature in the constitution of the Civil Courts, which had hitherto been filled by nominations of the local Governments and Sudder Adawlut Judges. He thought it was a provision which required consideration. He should have been very glad to have seen it accompanied by some definite statement of the qualification that would be required in the officers to be selected. If the Courts of Assistant Judges in Bombay were abolished, a definite qualification for judicial office would be more than ever required, and he would like to see it defined by Law.

He then begged to call attention to Section 6 of Chapter II, which provided for the appointment of Ministerial Officers. He quite agreed with the Honorable Member to his left (Mr. Grant) in the opinion which he had expressed as to the present weakness of our subordinate Courts. He fully admitted that the same weakness did exist in the Presidency of Bombay; but he did not think that it existed so much in the men who presided over these Courts, as in the inferior and wretchedly paid establishments which were allowed to them; and he felt convinced that, unless there were some well paid servants on these establishments, the Courts never would be what they ought to be, and never would command public confidence and respect. The Nazir of a Moonsiff's Court, to whom was entrusted the execution of decrees to any amount—it might be, to the amount of lakhs of Rupees—received a salary of about 8 to 12 Rupees per month. The Sheristadar, who was the Clerk of the Court, and had the custody of documents of, it might be, immense value, received a salary of 12 Rs. a month in some Courts, and of 10 Rs. a month in others. The consequence was that these men were frequently found tripping, the temptations placed before them being too strong for persons on such pittances to resist. He thought their present position required the greatest consideration. He believed that, until the subordinate Courts were provided with efficient and adequately remunerated establishments, and also until an efficient Bar should, to some extent, appear in the Courts, the Courts would not be what all of us desired that they should be. The former improvement was in the hands of the Government: the latter he hoped would be one of the fruits of Education now spreading throughout the country.

He would next call attention to Sections 38 to 42 of Chapter IV, which provided a special process for issuing summonses to Government officers for acts done in their official capacity. He did not think that these provisions were necessary; nor did he see any reason why Officers of Government should be placed in a different position from other defendants. If any differential course was considered necessary as to them, he thought that the simple procedure which now obtained in Bombay was much better than the one proposed by this Bill. That procedure was as follows:—

"If the suit be against a Collector of the land revenue, or other officer in charge of the interests of Government in any department, or any Assistant to such Officer, the Judge shall transmit a copy and English translation of the plaint to the Governor in Council for his consideration; and, at the expiration of (90) ninety days from transmission, or at any earlier period when he may receive intimation from Government that it has decided not to grant to the plaintiff the redress sued for, the Judge shall forward a copy of the plaint to the Officer concerned, in a blank cover, bearing his address, and the delivery thereof shall be held to be of the same effect as the serving of a summons in other cases."

Section 2 of Chapter IV p. 11 provided that the application for a summons should be made to the Clerk or other proper Officer of the Court. He thought that an objectionable provision. Unless our subordinate Courts were reformed and their establishments improved, it would be a very unsafe measure to entrust such power to the ministerial officers of the lower Courts.

Section 9 of the same Chapter, p. 16, provided that the person applying for a summons "shall state, at the time of his application, whether he requires a summons for the first hearing and settlement of issues, or for the final disposal of the cause." He should be sorry to

see that provision adopted. He should much rather prefer the present system in use at Bombay, and he believed elsewhere, of summoning a defendant to answer the plaint, and of the Judge settling the issues upon the appearance of the defendant on such summons. This Bill provided two distinct courses —one, a summons for the first hearing and settlement of issues; another for the final disposal of the cause. His opinion was that it would be very much better to provide one course—namely, the issue of a general summons to defendant to appear: on his appearance, the Judge to settle the issues from the contents of the pleadings recorded, and, if it were practicable, to pronounce a decision; but if the issues required to be proved by evidence, that the case be adjourned, and summonses for witnesses and evidence issued. He had seen many Courts, although the Regulations clearly provided for the determination of issues before the trial of the suit, take no notice of that wholesome provision; and the consequence was that, in the investigation, the record was entirely departed from; the proceedings were drawn out to an inordinate length; and great confusion followed. For some years past, the superior Courts had insisted upon Moonsiffs uniformly determining the issues before the witnesses were examined, and then, at the trial, confining themselves strictly to the matter before them; and this had had the effect of diminishing the work of the Moonsiffs, in many instances by one-half.

Section 100 of the same Chapter, page 63, provided that "if either party is dissatisfied with the issues as finally framed by the Court, such party may appeal upon that ground *after the decision of the case.*" If the appeal on the issues was made and decided as a summary appeal when the issues were drawn, he did not object to this part of the Bill. But if the right of appeal upon the ground that the issues were wrong, was preserved till after the decision of the case, it would in a great measure do away with the utility of settling issues, and appeals would constantly be made by unsuccessful litigants for the mere sake of gaining time and beginning the proceedings anew. He hoped that this enlargement of the present course of appeal would not be adopted.

The next part of the Bill to which he would advert, was Section 130 of the same Chapter, page 76, which provided that "all witnesses shall be examined without oath or affirmation, or any warning as a necessary preliminary to their giving evidence." This provision struck him as involving a very grave question, and one which required to be considered very carefully indeed. We had heard a great deal about the untruthfulness of Native witnesses. Was it supposed that the measure here proposed would impart a greater truthfulness to them? He confessed that he did not place much reliance on any opinion which the Natives had of the sanctity of the affirmation provided by Act V of 1840. He believed that they were not deterred by any religious feeling from violating such affirmation. They looked upon it as a form of declaration which the English had invented, and did not fear it as they feared their own forms of oath. But however that might be, he should be very sorry to see the warning with which an affirmation was accompanied, abolished. All of us knew how careless and apathetic Natives generally were in giving an account of what they had witnessed, or, where they were not careless and apathetic, how prejudiced they were in favor of one side or the other, and how apt they were to give a color to their testimony to suit their bias. His belief was, that, if a Native were brought before a Court of Justice, and, without any warning, asked to describe what he had seen, he would feel himself at liberty to say almost any thing he pleased—a feeling which must materially deteriorate the value of Native testimony. He was not very anxious about affirmations; but he *was* anxious about *warnings*, because he thought that a witness who gave his evidence under a warning, would give it under a recently awakened dread that he would be liable to punishment if he did not speak the truth.

Section 143 of the same Chapter, page 84, which prescribed what a decree should contain, appeared to him to alter the present Law for the worse. After providing that it should contain entries of the date of Judgment, the names of

the suitors, &c., it said—

"It shall also contain an exact copy of the *ordering* part of the Judgment, or a translation thereof, in the language in ordinary use in proceedings before the Court, and shall be sealed with the seal of the Court and signed by the Judge."

This altered part of the provisions of Act XII of 1843, which was one of the best Acts passed in connection with the Civil Procedure of this country. The 1st Section of that Act said—

"It is hereby enacted that in all the Presidencies so much of all Decrees as consists of the points to be decided, the decision thereon, and the reasons for the decision, and all injunctions for the revision of decrees in regular suits, and all orders for Reviews of judgment, which shall be passed by Judges of the Sudder Courts, or by Judges of Zillah and City Courts, or by Subordinate or Assistant Judges of Zillahs, shall be written originally in English, and signed by the Judge or Judges at the time of pronouncing such decision and orders, and shall be translated into the vernacular language commonly used in the Court wherein the suit to which the decree or order relates, shall have been instituted; and the translation shall be incorporated in the decree."

Every decision must shew the reasons for which the decision had been come to. He questioned very much whether decrees drawn under Section 143 of Chapter IV of this Bill would contain such reasons. He hoped that the point would be considered by the Select Committee to whom the Bill might be referred; and that they would also consider whether it was not advisable to retain so much of the present Law as required that the reasons of a decision should invariably form part of a decree.

Chapter V related to the execution or enforcement of decrees. He would beg the attention of the Council to Sections 30 and 31 of this Chapter, at pages 102 and 104. Section 30 prescribed the mode in which claims and objections to sale of attached property should be investigated: Section 31 provided that claims and objections should be preferred at the earliest opportunity. He did not know what the fact might be in Bengal; but, at Bombay, the sale of attached property in satisfaction of decrees was one of the points in which the Code of Civil Procedure was most defective. A plaintiff at Bombay obtains a decree within a reasonable time after the institution of his suit—namely, three or four months. He applies within a month to get it executed, and the defendant's property pointed out by him is attached under the decree. But if, before the sale, a third person intervenes and claims the property as his own, he can put off the sale until his claim is tried and disposed of. This was a common occurrence; and he (Mr. LeGeyt) knew of several suits which had remained pending under the operation of the existing state of the Law for 4, or 5, or 6, or 7 years, thereby rendering the decree in the hands of the first plaintiff an utter nullity, and defeating his just claim by what probably was a false and collusive one. A remedy for this evil was urgently needed. The procedure provided seemed to him to leave matters very much as they were. The alternative of selling the property subject to the claim brought forward was found to cause that property to be sold at a very depreciated price, and defendants would often resort to collusive sales, and buy back their own property under false names at a nominal price. He hoped that, in the new Law before the Council, such a provision would be made as would give to honest creditors a prospect of relief. He believed that this difficulty was managed much better within the limits of the jurisdiction of Her Majesty's Supreme Court, where the Sheriff had authority to withhold sale under the attachment until he got an indemnity from the plaintiff to defray the costs and satisfy the verdict in any action of trespass which might be brought against him (the Sheriff) by any person other than the debtor claiming a right or interest in the property. He was quite aware there were drawbacks to this course also; but it was a matter to which he desired to call attention in the hope that some real reform might be suggested to the Council.

Chapter VI of the Code, page 116, related to contempts and disobedience of orders. By the present Law in Bombay (Section 51 of Reg. IV of 1827), any person who employs terms of abuse in pleading, or wilfully prevaricates when examined as a witness, may immediately be punished by the Court with fine or imprisonment, or both. And Section

54 provided that when a Court is satisfied that a suit has been instituted groundlessly, or for vexatious purposes, it may punish him with fine, and, in default of payment, with imprisonment. In Chapter VI of this Code, he could find no provision for the punishment of contempts of this nature. He could say, from his own experience, that, at Bombay, the provision of Section 51 had been found to operate as a wholesome check upon parties before the Court, and that there had been frequent occasion to resort to it. To suppose that a Moonsiff in whose Court the offence might be committed would send the offender up to the Sessions Court on a charge of perjury, was idle. The Moonsiff would not have time to do it; or, if he should have time, the cases sent up would so often fail in the Sessions Court, that the virtue of the mere power to send up would be *nil*.

He was much obliged to the Council for its kindness in having listened with so much patience to his remarks, and should conclude by saying he trusted that the effect of the publication of the Bill would be to elicit such valuable opinions and suggestions from the Judicial Officers in the Presidency of Bombay, and from others, as would enable the Select Committee to present the Bill to the Council in such a form as would render it really beneficial to the administration of Civil Justice in that Presidency.

MR. PEACOCK'S Motion was carried, and the Bill read a second time.

MUNICIPAL ASSESSMENT (SUBURBS OF CALCUTTA AND HOWRAH.)

MR. CURRIE moved the second reading of the Bill "for raising funds for making and repairing roads in the Suburbs of Calcutta and the Station of Howrah."

The Motion was carried and the Bill read a second time.

ORIENTAL GAS COMPANY.

The Order of the Day for the third reading of the Bill "to confer certain powers on the Oriental Gas Company, Limited" being read—

MR. CURRIE moved for the re-committal of the Bill.

Agreed to.

The Bill passed through the Committee after a few slight alterations, and was reported.

MR. CURRIE moved that the Bill be now read a third time and passed.

The Motion was carried, and the Bill read a third time.

CIVIL PROCEDURE (BENGAL.)

MR. PEACOCK moved that the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bengal" be referred to a Select Committee consisting of the Chief Justice, Mr. Grant, Mr. Currie, and the Mover.

Agreed to.

CIVIL PROCEDURE (N. W. P.)

MR. PEACOCK moved that the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in the North-Western Provinces" be referred to a Select Committee consisting of Mr. Eliott, Mr. Allen, and the Mover.

Agreed to.

CIVIL PROCEDURE (MADRAS.)

MR. PEACOCK moved that the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Madras" be referred to a Select Committee consisting of Mr. Eliott, Sir Arthur Buller, and the Mover.

Agreed to.

CIVIL PROCEDURE (BOMBAY.)

MR. PEACOCK moved that the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bombay" be referred to a Select Committee consisting of Mr. Eliott, Mr. LeGeyt, and the Mover.

Agreed to.

MESSENGER.

MR. CURRIE moved that Mr. Grant be requested to take the Bill "to confer certain powers on the Oriental Gas Company, Limited" to the Governor-General for his assent.

Agreed to.

MUNICIPAL ASSESSMENT (SUBURBS OF CALCUTTA AND HOWRAH.)

MR. CURRIE moved that the Bill "for raising funds for making and repairing roads in the Suburbs of Calcutta and the Station of Howrah" be referred to a Select Committee consisting of Mr. Eliott, Mr. Allen, and the Mover.

Agreed to.

NOTICE OF MOTION.

MR. CURRIE gave notice that he would, on Saturday the 14th Inst., move that the Council do resolve itself into a Committee on the Bill "to make better provision for the order and good government of the Suburbs of Calcutta and of the Station of Howrah."

The Council adjourned.

Saturday, February 14, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	D. Eliott, Esq.,
Hon. Major Genl. J. Low,	C. Allen, Esq.,
	P. W. LeGeyt, Esq.,
Hon. J. P. Grant,	E. Curric, Esq., and
Hon. B. Peacock,	Hon. Sir A. W. Buller.

MESSAGE FROM THE GOVERNOR GENERAL.

The following Message from the Governor-General was brought by Mr. Grant and read:—

MESSAGE No. 97.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 31st January 1857, entitled "A Bill to amend the Law relating to the duties payable on Tobacco and the retail sale and warehousing thereof in the Town of Bombay."

By order of the Right Honorable the Governor-General.

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 9th Feb., 1857.

HINDOO POLYGAMY.

THE CLERK presented a Petition from Hindoo Inhabitants of Baraset praying for the abolition of Hindoo Polygamy.

MR. GRANT moved that the Petition be printed.

Agreed to.

DESPATCHES FROM THE COURT OF DIRECTORS.

THE CLERK reported to the Council that he had received from the Officiating Under-Secretary to the Government of India in the Home Department a copy of a Despatch from the Honorable the Court of Directors reviewing the Acts of the Legislative Council from No. XV of 1854 to No. XXXVIII of 1855; together with an extract of a Despatch from the Honorable Court regarding the arrears of business in the Sudder Court at Calcutta.

IMPRESSMENT OF CARTS FOR MILITARY PURPOSES.

THE CLERK also reported that he had received from the Officiating Secretary to the Government of the North-Western Provinces a communication regarding the impressment of Carts for Military purposes.

MR. GRANT moved that the above communication be printed.

Agreed to.

PORT-DUES AT PENANG.

THE CLERK also reported a communication from the Straits Government forwarding a copy of a letter from the Chamber of Commerce at Penang against the levy of Port-dues at that Port.

MR. GRANT moved that this communication be printed.

Agreed to.

SUBSISTENCE OF SMALL CAUSE COURT PRISONERS.

MR. LEGEYT moved the first reading of a "Bill to amend Act IX of 1850," which is the Act which constitutes the Small Cause Courts in the Presidency Towns. The object of the Bill, he said, was to give relief to debtors in prison under writs from the Small Cause Courts in the matter of subsistence-money. A Petition had lately been presented to the Government of Bombay from thirty-

seven persons confined in the Gaol of Bombay under writs of the Small Cause Court, complaining of the insufficiency of the diet-money allowed them, and praying that it should be increased. The rate of diet-money was fixed by Section LXII of Act IX of 1850 at 1½ anna a day. The First Judge of the Court of Small Causes in Bombay, on the Petition being referred to him, stated it to be his opinion that the rate was an extremely low one. The Government then called on the Commissioner of Police for his opinion; and that functionary reported that no prisoner in the House of Correction, however short the term of his imprisonment might be, was placed on so low a rate of allowance as 1½ anna a day, but that the rate allowed to prisoners confined therein for the shortest period was 2½ annas a day. He also suggested that, as Civil prisoners were not subjected to hard labor, 2 annas a day would be a sufficient rate of allowance for them. The Government of Bombay had accordingly requested him to "move the Legislative Council for an amendment of the present Law, and to propose that the subsistence-allowance of Civil prisoners confined in the Bombay Gaol under process of the Court of Small Causes, be fixed at 2 annas, instead of 1½ anna a day." In the Bill which he proposed, he had not exactly followed the requisition of the Bombay Government. He had thought it better to leave Act IX of 1850 intact, and to frame a new enactment, which should be read with and taken as part of that Act, and which would give to the Judges of the Small Cause Courts the same power that was conferred on the Judges of the Supreme Court by Section X Clause IV of Act VII of 1855, the last Law passed by the Council on arrest for mesne process. That Clause said—

"It shall be lawful for the Court out of which any such writ shall issue, or for any Judge thereof, to reduce the rate at which deposits are above ordered to be made, so that the rate ordered be not less than one anna a day; or, in the case of illness or other special cause, to order the deposit to be increased to a rate not exceeding eight annas a day: and every such order may, from time to time, be revised and altered by the Court or any Judge thereof on sufficient grounds being shown."

He had adopted in his Bill as nearly as possible the language of this Clause, so that, if the Bill passed, it would be in the power of the Judges of the Small Cause Courts, in any case, on due cause being shewn, to vary the rate of subsistence-money allowed by the Act, and either reduce it as low as one anna, or raise it as high as 4 annas. In the Mofussil Gaols in Bombay, the usual rate for prisoners for debt was 2 annas, and it might be increased to 4 annas; and grain was much dearer in the Town of Bombay than in the Mofussil, and, perhaps, other parts of India.

The Bill was read a first time.

POLICE AND CONSERVANCY (SUBURBS OF CALCUTTA AND HOWRAH.)

MR CURRIE moved that the Council resolve itself into a Committee on the Bill "to make better provision for the order and good government of the Suburbs of Calcutta and of the Station of Howrah;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended that it should be passed.

Agreed to.

Section I was passed as it stood.

Section II was passed, after an amendment in Clause 2.

Section III was passed after amendments.

Sections IV to XIII were passed as they stood.

Section XIV provided as follows:—

"Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill played at licensed Hotels, Taverns, or Eating-houses, or places of public resort."

THE CHIEF JUSTICE said, it appeared to him and to his Honorable friend on the right (Mr. Grant) that it was hardly desirable to retain this Section. If it was intended to be a definition of what were lawful games, or what games were to be excepted from the purview of the Act, it did not go far enough. It would appear, from the annexures to the Bill, that that very active and promising officer, the Magistrate of Howrah, did not clearly understand the Sections which preceded; and certainly the corresponding Sections in the Calcutta Act were not much understood in Calcutta. Sections XII and XIII of this Bill spoke of "com-

mon gaming-houses." Here, there had been several cases in which the provision in the local Act had been strained, and persons had been convicted whether they had been playing in a common gaming-house or in a private gaming-house. Those convictions the Supreme Court had quashed. If the Legislature wished to make it penal to game in a private gaming-house, it should say so; but a common gaming-house differed from a private gaming-house in this, that it was kept for the purpose of profit, and was open to any one who chose to come in and game. He therefore did not understand Section XIII as including private gaming-houses; but if Section XIV were retained, the impression raised would be that, by the preceding Section, the Legislature intended to punish all games, except games of mere skill, at whatever place played; for instance, that it would be punishable to play whist at the Bengal Club, whist certainly not being altogether a mere game of skill.

MR. CURRIE said, he entirely concurred in the observations of the Honorable and learned Chief Justice. In fact, it was because he entertained the same view that he had not inserted Section XIV in the original Bill; but the Select Committee, on considering the suggestion sent up by the Magistrate of Howrah, had thought that, as a similar Section stood in the Calcutta Police Act, they might as well insert it in this Bill. For himself, however, he thought that the objection pointed out by the Honorable and learned Chief Justice was a sound one, and that the Section ought to be omitted.

In reply to a remark from Mr. Peacock, Mr. Currie added that he thought Section X was intended to apply to common gaming-houses.

Section XIV was then put and negatived.

Sections XV to XXIII were passed as they stood.

Section XXIV prescribed a penalty of 20 Rupees for certain offences in public streets.

MR. CURRIE moved that the following Clause be inserted after Clause 3 of the Section:—

"Whoever fastens any animal so as to cause obstruction or danger to passengers."

The motion was agreed to, and the Section then passed.

Section XXV was passed after an amendment.

Sections XXVI to XXVIII were passed as they stood.

Section XXIX provided for names and numbers being affixed to streets and houses.

MR. CURRIE said that this Section was the same in effect as one in the Chowkeydaree Act. As that Act would extend to places to which this Bill was intended to apply, the Section should be omitted.

The Section was put and negatived.

Section XXX was passed as it stood.

MR. CURRIE said, Section XXX provided for the removal of future projections; but there was no provision in the Bill which enabled the Magistrate to deal with any obstructions now existing. In the Nuisance Act (XXI of 1841), which it would be necessary to repeal so far as it applied to the limits subject to this Bill, there was a provision which empowered Magistrates to remove existing obstructions. He should therefore move that the following new Section, which had been taken from Act XIV of 1856, be inserted after Section XXX:—

"The Magistrate may cause any such projection, encroachment, or obstruction erected or placed against or in front of any house or building, in any public street before the passing of this Act, to be removed or altered as he shall think fit, provided that he give notice of such intended removal or alteration to the occupier of the house or building against or in front of which such projection, encroachment, or obstruction shall be, thirty days before such alteration or removal is begun; and if such projection, encroachment, or obstruction shall have been lawfully made, he shall make reasonable compensation to every person who suffers damage by such removal or alteration."

Agreed to.

Section XXXI was passed after amendments.

Sections XXXII to XXXVI were passed as they stood.

Section XXXVII prohibited the keeping sheep-pens, &c. in or near any street, in a filthy state, under pain of a fine not exceeding 20 Rupees.

MR. CURRIE said, the Section, as it now stood, did not provide for the abatement of the nuisance if, notwithstanding the infliction of repeated fines,

the offender chose to keep the stall or pen in a filthy state. He understood from the Magistrate of the 24-Pergunnahs that the expense of removing filth from stalls and pens was so great that the keepers of cattle thought it worth while to pay a fine now and then, as being cheaper in the long run. He therefore moved that the following words be added to the Section, in order that, after the second infliction of fine, the Magistrate might have the power to enforce the removal of the filth:—

"If, after a second conviction, the offence is again repeated with respect to the same stall, pen, or place, the Magistrate may order that the cattle, sheep, or pigs kept therein be removed to some other place approved by the Magistrate, or beyond the limits subject to this Act, and if they be not so removed within the period prescribed in such order, which shall not be less than seven days, the person offending shall be liable to a fine not exceeding ten Rupees for every day during which the cattle, sheep, or pigs remain after the expiration of such period."

THE CHIEF JUSTICE said, he thought that the amendment would be going rather too far. The Section, as it stood, subjected to a penalty not exceeding 20 Rupees any person who kept a pen or stall, in or near any street, in a filthy or noxious state. It had been suggested, it seemed, that keepers of cattle might think it cheaper to pay an occasional fine than be at the expense of removing the filth. But, really, where a keeper of cattle persisted, after conviction, in keeping his stall or pen in a noxious state, there was nothing to prevent the Police from laying an information before the Magistrate against him, and having him fined every day that he kept it in that state. If, for instance, a keeper of cattle were convicted and punished under this Section on a Monday, and allowed the filth to remain in his stables notwithstanding, there was nothing in the Section to prevent his being convicted and fined anew on Tuesday, and on every subsequent day during which he continued his offence. That ought to be enough to cure the evil. But the addition now proposed to be made to the Section would reduce the calling of a cattle-keeper to a licensed trade; for it would say, in effect, "You have offended, and must cease to be a cattle-keeper."

MR. CURRIE said, his object was merely to provide what had been provided by Act XIV of 1856 for the Town of Calcutta. There were many parts of the suburbs in which the provision made on this subject by that Act was quite as necessary in the suburbs as in the Town itself. Act XIV of 1856 said that no one should keep "more than 20 sheep or goats, or 10 horned cattle, in or near any street." His object in the addition which he proposed to make to the Section in this Bill, was merely to enable Magistrates in the suburbs and at Howrah, if stalls and pens in crowded parts were not kept in a cleanly state, to enforce the removal of the cattle from those parts where, in point of fact, it would be much better if they were not kept at all. That was the ground on which he had proposed his amendment; and he did not think that the power which it would confer would be abused. He was, therefore, disposed to press his motion.

The amendment was put, and negatived.

The Section was then passed as it stood.

Sections XXXVIII to XL were passed as they stood.

Section XLI provided that,

"when any private tank or low marshy ground, or any waste or stagnant water, being within any private enclosure, appears to the Magistrate to be injurious to health, or to be offensive to the neighborhood,"

the Magistrate may require the owner of the premises to cleanse or fill up such tank or ground, or to drain off the stagnant water; and, in case of non-compliance with his requisition during eight days from the service thereof, may himself do all necessary acts for either of those purposes, holding the owner responsible for the expense.

MR. CURRIE moved an amendment by which the Magistrate would be empowered to do the work if the owner did not begin upon it within one week after notice, and complete it with due diligence.

MR. GRANT said, on this amendment, and on the Section altogether, he should like to ask if the provision had been thoroughly well considered. If a man digs an unwholesome tank on his ground, it is very proper that he should be made to fill it up. But if a

Mr. Currie

piece of ground is in its natural state, and happens to be marshy, was it intended that the proprietor should be bound to procure earth from any distance, and improve it at his own cost? If it was necessary for the public good to improve it, he (Mr. Grant) thought that the expense, which would be great, ought to be shared equally by the whole neighbourhood, and not be made to fall on the person who happens to be the proprietor. He saw no objection to a man who has allowed his ground to deteriorate, and so become unwholesome, being compelled to restore it; but he saw very great objection to compelling a proprietor to improve his ground, at a heavy expense, beyond its natural and original state.

It, therefore, appeared to him that the Section should be amended in this respect. If it was not convenient to make the amendment now, the further consideration of the Section might be reserved until next Saturday.

MR. CURRIE said, the words of the Section had been adopted from the Calcutta Conservancy Act, and, therefore, in inserting them in this Bill, he had not given any great consideration to them, nor had the Select Committee, who presumed that they had been fully considered when they were introduced into that Act. But he had no objection to reserve the Section until next Saturday. The amendment he had proposed, however, might be agreed to in the mean time, and the Section allowed to pass, on the understanding that it should be reconsidered by the Members who had formed the Select Committee before the motion for the third reading.

The amendment was then agreed to, and the Section passed.

Sections XLII to XLVI were passed as they stood.

Section XLVII was passed after an amendment.

MR. CURRIE said, he should move that a new Section be introduced after Section XLVII. That Section provided a penalty for newly establishing offensive and dangerous trades within certain limits without a license from the Magistrate; but it contained no provision respecting offensive and dangerous trades already existing. The present Nuisance Act did provide expressly for the suppression or removal of trades injurious to the health or comfort of the Community; and he proposed to insert in this Bill a Section which would give power to the Magistrate to prevent, with the sanction of the Lieutenant-Governor previously obtained, the continuance of trades in places where they were now carried on, if, upon due enquiry, it should be ascertained that they were dangerous to the health or safety of the neighbourhood. The seat of Government being on the spot, there would be no difficulty in obtaining the sanction of the local Government.

The following was the Section which he proposed to insert:—

"If, on the evidence of competent persons, it shall appear to the Magistrate that any place within the prescribed limits used for any of the purposes mentioned in the last preceding Section before the passing of this Act, is dangerous to the health or safety of persons living in the neighbourhood thereof, the Magistrate, with the sanction of the Lieutenant-Governor previously obtained, may make an order that the use of such place for any such purpose shall be discontinued within a certain period, which shall not be less than thirty days, to be specified in the said order; and whoever shall continue so to use such place in contravention of such order, shall be liable to a fine not exceeding fifty Rupees for every day during which such use is continued after the expiration of the said period."

This Section was not to extend over the whole of the suburbs, but only to the more populous parts, in which the continuance of such trades would be improper.

By the present Nuisance Act, a Magistrate must proceed by issuing an Injunction; and if the person affected should object to it, a Jury was to be appointed to try and decide the question, of whom three should be nominated by the Magistrate, and the remaining two by the person objecting to the Injunction. That Act would clash very much with this; and, therefore, he (Mr. Currie) thought it would be better to insert in the Bill a separate provision such as the one he proposed, and to declare, as he intended to do, by a Section at the end, that, with respect to all matters expressly provided for by this Act, the provisions of Act XXI of 1841 should be held to be superseded.

MR. GRANT said, he was doubtful as to the propriety of bringing in the Executive Government at all. The

question to be decided under the Section, would be a question of fact—namely, whether a trade carried on in any particular place is dangerous to the health or safety of the neighbourhood; and that ought to be decided by some judicial authority, upon evidence. He observed from the Schedule that Ghoosery was one of the places to which the Bill was to apply. If the Sugar Works there, which form an enormous concern, would come under the Section proposed, he certainly thought that they ought not to be removed without a full judicial investigation.

It appeared to him, however, that the matter might be left to the general Law. There was a Regulation on the subject applicable to the whole country.

MR. PEACOCK said, he agreed with the Honorable Member who had just spoken. He knew of large sums having been invested in machinery for grinding clay for brick-kilns. If a Magistrate might remove the machinery and brick-kilns summarily, the proprietors would be subjected to great loss.

MR. CURRIE said, several of the provisions of this Bill would rather conflict with the general Law to which the Honorable Member opposite (Mr. Grant) had referred, and he had therefore thought it necessary to provide the power of suppression or removal separately in this Bill. But he would not press his Motion.

The Motion was, by leave, withdrawn.

Sections XLVIII and XLIX were passed after amendments.

Sections L to LII were passed as they stood.

Section LIII was passed after an amendment.

Section LIV prescribed the procedure to be followed on information or complaint laid before the Magistrate, of an offence against the Act; and provided that the general Law as to appeals should be applicable to orders passed by Magistrates.

MR. CURRIE said, under the general Law, an order passed by a Magistrate would be appealable to the Sessions Judge; but he thought that an order passed by a Magistrate with the sanction of the Lieutenant-Governor, ought not to be appealable. He should therefore move to add a Proviso to the Section declaring that no appeal should lie from any such order.

THE CHIEF JUSTICE said, before the amendment was put, he wished to say that he had some doubts as to the last proviso in the Section as it stood. It limited the time within which the prosecution of "any offence, not of a criminal nature" should be commenced, to three months from the commission of the offence. It was difficult to conceive any offence which was not of a criminal nature. It occurred to him that the object in view might be gained by saying "any offence created by this Act," or words to that effect.

MR. CURRIE said, the words had been adopted from the Calcutta Police Act, and, he thought, might as well be retained.

MR. GRANT moved that the words "not of a criminal nature," after the word "offences" in the 20th line of the Section, be left out, and the words "punishable under this Act" be substituted for them.

MR. CURRIE said, he thought it would be better to let the words in the Section stand. They could hardly be omitted without the substitution of some other explanatory words. For instance, the Council would not allow a period of three months for prosecuting the offence of not filling up an unwholesome tank, or not removing an obstruction.

MR. GRANT'S Motion being put, the Council divided:—

AYES—8.	NOES—2.
Sir Arthur Buller.	Mr. Currie.
Mr. LeGeyt.	Mr. Elliott.
Mr. Allen.	
Mr. Peacock.	
Mr. Grant.	
General Low.	
The Chief Justice.	
The Chairman.	

THE CHIEF JUSTICE then said, if the Honorable Member for Bengal thought that the words of the Proviso as it now stood went too far, and that it was inexpedient to extend the limit of three months to all offences punishable under the Act, it would be better to reserve the further consideration of the Section, until the Select Committee could go through the Bill and see which offences created by it ought to be made subject to that limitation, and which

ought not, and then say that the prosecution of the offences specified in such and such particular Sections should be commenced within three months, and not otherwise.

MR. CURRIE said, he thought it would be better to pass the Section now, and leave to the Select Committee the consideration of the further amendment suggested.

MR. GRANT moved that the words "not of a criminal nature" after the word "offence" in the 26th line of the Section, be left out, in order that the words "punishable under this Act" be substituted for them.

Agreed to.

MR. CURRIE moved that the following Proviso be added to the Section:—

"Provided further that no appeal shall lie from any order of a Magistrate passed with the sanction of the Lieutenant-Governor of Bengal."

The Motion was agreed to, and the Section then passed

Sections LV to LVIII were passed as they stood.

The Schedule was passed after an amendment.

The Preamble and Title were passed as they stood.

The Bill was reported.

EXPOSURE OF INFANT CHILDREN.

MR. CURRIE moved that a communication received by him from the Government of Bengal on the subject of the exposure of infant-children for the cure of certain diseases, be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

BOMBAY CENSUS.

MR. LEGEYT moved for leave to withdraw the Bill "for taking account of the population of the Town of Bombay."

Agreed to.

The Council adjourned.

Saturday, February 21, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	D. Eliott, Esq.,
Hon. Major Genl. J. Low,	C. Allen, Esq.,
	P. W. LeGeyt, Esq.,
Hon. J. P. Grant,	E. Currie, Esq., and
Hon. B. Peacock,	Hon. Sir A. W. Buller.

MESSAGE FROM THE GOVERNOR GENERAL.

The following Message from the Governor-General was brought by Mr. Grant and read:—

MESSAGE No. 98.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 7th February 1857, entitled "A Bill to confer certain powers on the Oriental Gas Company, Limited."

By order of the Right Honorable the Governor-General.

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 13th Feb. 1857.

HINDOO POLYGAMY.

THE CLERK presented a Petition from Rajah Ojoodheram Khan and other Hindoo Inhabitants of Bengal, praying for the abolition of Hindoo Polygamy.

MR. GRANT moved that the Petition be printed.

Agreed to.

SONTHAL DISTRICTS.

THE CLERK presented a Petition from Native Inhabitants of Furruckabad and Sumsergunge, praying for the passing of an Act to place them under the jurisdiction of the Moonsiff's Court at Junghypore, and the Fouzdary Court at Aurungabad, and to bring their districts under the operation of the general Laws and Regulations from which they were removed by Act XXXVII of 1855.

MR. CURRIE moved that the Petition be referred to the Select Committee on the Bill "to amend Act XXXVII of 1855."

Agreed to,

LANDHOLDERS' LIABILITY IN RESPECT OF CERTAIN OFFENCES.

THE CLERK presented a Petition from the British Indian Association concerning the Bill "to extend the provisions of Regulation VI. 1810 of the Bengal Code."

MR. ALLEN moved that the Petition be referred to the Select Committee on the Bill.

Agreed to.

IMPRESSMENT OF CARRIAGE AND SUPPLIES FOR TROOPS AND TRAVELLERS (BENGAL).

MR. GRANT moved the second reading of the Bill "to amend the Law regarding the provision of carriage and supplies for Troops and Travellers, and to punish unlawful impressment."

MR. ELIOTT said, as reference had been made, on the motion for the first reading of the Bill, to the Law and practice which exist in Madras with regard to impressment of carriage and supplies for troops and travellers, he wished to say a few words on this occasion. He was prepared to vote for the second reading, for he quite approved of the principle of the Bill. There was formerly a Regulation in the Madras Code—namely, Regulation III of 1810—corresponding exactly with, in fact copied from, Regulation XI of 1806 which was to be amended by this Bill. That Regulation had been repealed so long ago as 1821, under Sir Thomas Munro's Government, for reasons similar to those adduced in support of this Bill—that was to say, because its working was found to be intolerably oppressive. Sir Thomas Munro had recorded a Minute in which he expressed a very strong sense of the acts of oppression which sprung up under the operation of the Regulation of 1810. His Minute was very well worthy of consideration; and he (Mr. Eliott) had made some extracts from it which shewed the grounds on which Sir Thomas Munro considered that the Regulation should be repealed, and which he (Mr. Eliott) begged leave to read as pertinent to the measure now proposed. The evil, Sir Thomas Munro said, which the Regulation was meant to alleviate, had been greatly augmented by it, because, by making it the duty of the Magistrates to furnish troops on the march with provisions and conveyance, it had led officers to neglect the precautions which were formerly in use for supplying themselves before the march commenced, and to trust almost entirely to the villages on their route for every thing. All the evils which the country suffered occasionally from bad seasons and other natural causes, Sir Thomas Munro affirmed, were light in comparison with the evil of impressment which was sanctioned by Law. It was so extensive that we did not hear of one-fiftieth part of the oppression which sprung from it. No body of troops, no detachment on guard, ever stirred without some compulsory requisition of provisions, coolies, or cattle, too frequently attended with some outrage upon the persons of the village people. A great road, which is in most countries an advantage to the villages near which it passes, is, in this country, the reverse; and instances were known in which the inhabitants had abandoned their villages to avoid the harassment to which they were liable under the Regulation. When the Magistrate is called upon to collect supplies at different places at which troops encamp on their march, he is obliged to order the Tehsildars to send grain and other articles from villages within ten or twelve miles of the camp. As the owners are unwilling to quit their homes, the sending them is always a matter of compulsion. They are placed under a guard, like criminals, to prevent their escape. If the troops do not arrive at the time expected the owners are kept under restraint till their arrival. The full price is seldom paid; no compensation is made for their detention, or for the distance from their homes: and of the price that is paid, a considerable part usually remains in the hands of the minor Commissariat servants, or of private servants who have received the money from their masters in order to adjust the account. If the means of conveyance for the detachment are deficient, coolies are pressed, or the bullocks of the villagers who brought grain to Camp, are seized and sent on with the troops, and frequently never returned. Travellers are, in proportion to their numbers, more oppressive than bodies of troops. The evil never could be remedied as long as

Government authorized its Officers to undertake the supplying of all the wants of Troops and Travellers at every stage of their progress through the country. But it could easily be remedied by a prohibition against affording any such aid. Let all Officers, European and Native, understand that they are to have no aid from any public authority in passing through the country, and we should soon see that, when the inhabitants perceived that nothing could be taken from them by compulsion, they would be more ready in bringing forward what they had for sale, and Travellers would be more readily supplied than now with what the villages afford. Sir Thomas Munro had trusted to the Regimental Bazaars recently established to secure the troops from want in marching. It would be the duty of Commanding Officers, before they began their march, to see that the Bazaar had a sufficient stock, and that it was kept up by occasional purchases on the road. The experiment was not a new one. Many corps had had such Bazaars, and had passed through the country without requiring assistance from the local authorities. The system of requisition, as far as regards the pressing of coolies, Sir Thomas Munro observed, was so discreditable to our administration, and so oppressive to the people, that no obstacle ought to prevent us from putting an end to it. No measure short of a total prohibition by Law could have this effect.

The idle complaint that the inhabitants will not sell provisions or forage without an order, Sir Thomas Munro thought, deserved no attention. "How," he asked, "do the native traders who pass through the country with thousands of bullocks laden with cotton and betel-nut, find no difficulty in procuring supplies for themselves and their cattle?" Half the inhabitants of a village were frequently seen going out to their tents carrying bundles of straw, while a traveller at the same village could hardly procure a single bundle for his horse. The difference arose entirely from the mode of fixing the price—from its being done in the one case by the seller, and in the other by the buyer. The numerous body of bullock-men employed by shop-keepers in transporting supplies from Madras to the distant stations, got whatever they wanted at the village, and found no difficulty in replacing such of their bullocks as died on the road. It was only Europeans and their servants who met with difficulties, and it was only when the servant travelled with his master that he met them. The cause was evident enough. He endeavored, under the authority of his master's name, either to evade payment altogether, or to pay as little as possible for what he got in the village, and the village people were naturally enough averse to any dealing on such terms.

In accordance with the suggestions made by Sir Thomas Munro, so much of Regulation III of 1810 of the Madras Code as authorizes Public Officers to impress supplies of provisions and means of carriage for Troops and Travellers was repealed; and since the passing of Regulation VI of 1821, it had not been lawful to secure supplies and carriage by any compulsory means. It would naturally be asked, what had been the effect of Regulation VI of 1821? Had it been successful? He was afraid he must say that it had not been. The Government of Madras had been forced to recognize the necessity of impressment. They had been forced to recognize the necessity of allowing their Civil Officers to interfere in the providing of supplies for Troops on the march in cases of emergency. He found that, in February 1840, the Board of Revenue passed the following rule:—

"On occasions of emergency, it will always be necessary that the Civil Authority should provide a certain quantity of bullocks and carts from the inhabitants of the District. It is, however, to be carefully kept in view that, in such cases only, the public good requires that individuals should not be put to inconvenience and loss, and the authority of the Magistrate is not to be exerted to press carriage for Troops, except upon the requisition of the Officer Commanding certifying the absolute necessity of the case; and in his report to superior authority, this voucher is to be supported by the declaration of the Commissariat Officer of his inability to meet the requirements of the Public Service from the means at his disposal

"Equally will it be the duty of the Collector, in cases of emergency, to endeavor to meet similar requisitions for supplies which the Commissariat may be unable to furnish; but it is to be observed that, except in the instance of a sudden and unexpected movement of Troops, the necessity for his interference may always be avoided by the exercise of due vigil-

ance and activity on the part of the Commissariat Officer."

Various orders had been issued, from time to time, in a manner recognizing the impossibility of moving troops without such assistance. He had before him one issued in 1841, in which the Government said—"if it is impracticable to move Troops in this country without pressing carriage, everything should be done to make it bear as lightly as possible upon the cart-owners." The last order which he found upon the subject, was dated in September 1846. It embodied a letter from the Court of Directors in reference to certain instructions given to the Acting Magistrate of North Arcot to defend two suits for the recovery of damages for pressing carts, &c. for the use of the 30th Regiment Native Infantry:—

"The following representation of the facts of the case, is given in the Magistrate's letter.

"In August and September last, the 7th Cavalry, and the 14th and 30th Regiments Native Infantry, quartered at Raneeput and Vellore, were severally under orders to march to very distant Stations, namely, Kamptee, the French Rocks, and Samulcottah. As soon as the orders appeared in the Gazette, the people in the district got notice of it, and began to drive their Bullocks into the Jungle, and hide the wheels of their Carts. I was in consequence not able fully to comply with the requisitions made on me for Carriage by the Military Authorities; but I managed, with very great difficulty, to procure 436 Carts with Bullocks in addition to the Carriage supplied by the Commissariat. The whole of these Carts were pressed, and in many instances the owners preferred entirely abandoning their property, to accompanying the Regiments to the distant stations to which they were proceeding. The plaintiffs in the suits under reference acted in this manner. Their Carts and Bullocks accompanied the 30th Regiment, and the Plaintiffs now sue to recover the value of them.

3. "If the practice of pressing Carriage on occasions of the ordinary march of Troops within our Territories were justifiable, the measures adopted in this instance would seem to have been regular and free from blame. But the Magistrate has forcibly set forth the hardship of such a practice, and we are not aware, when due notice of the march of troops is given, and proper arrangements are made by the several Authorities concerned, what should hinder those Authorities from procuring, by Contract, the whole supply of Carriage required, as part of it seems actually to have been procured We desire that no precaution or exertion may be omitted for relieving the people from such compulsion, and that it may not be resorted to except in cases of absolute necessity especially brought to your notice; and then only for distances as short as practicable."

It was only on occasions of emergency, therefore, that the Revenue Authorities were to interfere, and that impressment of carriage was to be resorted to. The Commissariat, however, it seemed, generally made out every movement of Troops to be a case of emergency. The orders referred to made it the duty of local Officers to do what there was no legal authority for, and practically the necessity of impressment seemed to have been recognized.

He would now refer to certain points of detail embraced by the Bill.

The Bill provided that Officers of Government might resort to impressment in only two specified cases—cases, namely, of emergency, when troops are marching; and cases where troops are suddenly ordered to take the field, and there is no time for applying for an order from Government. Except as regarded these two cases, Section II prohibited all impressment. It appeared to him that, besides those two cases of emergency, there was another which it would be proper to provide for. He had received a strong representation from the Madras Government on this point. It had formerly been the custom, in that Presidency, to use forced labor for public works. Latterly, that custom had been very much discountenanced by the local Government, and almost entirely put an end to. In the great works on the Godavery, for example, for which thousands of laborers were required, it was necessary, at first, to use compulsion in collecting them and keeping them at work; but as the works proceeded, the Officers of Government were able to come to such arrangements as placed voluntary labor at their disposal; and for the last three or four years he might say that forced labor had been there done away with, and laborers had generally come in of their own free-will from different parts of the country, and gone back to their homes after working out their contracts. And he could say that Government had forbidden the use of compulsion in procuring laborers for the public roads. The rule now as to Public Works in Madras was not to impress labor. Whenever labor was impressed formerly, it was always paid for, and handsomely paid for. The case to which

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he referred as one of such emergency as to warrant its being made an exception from the general prohibition in Section II was that of sudden and serious damage occurring to tanks, rivers, channels, or other works, where, for the general good, immediate repair was of urgent necessity. The Madras Government strongly represented the necessity of a power being vested in the Executive to press labor for this purpose. Any breach in the embankment of a river, for example, must be instantly stopped, or the whole country would be liable to devastation. In such cases, it had always been found necessary to press a vast quantity of labor on the instant, in order that public mischief might be averted. In the face of Section II of this Bill, however, and the still more penal provision in the Penal Code on the subject of compelling labor, this could not be done unless a special provision were introduced legalizing compulsory requisition for labor in such cases, as well as in those provided for in Sections IV and V. The Madras Government called for it as highly necessary; and it would be well if the Select Committee, to whom this Bill might be referred, would take it into consideration.

MR. LEGEYT said he desired to say a few words in reference to the remarks which the Honorable Mover of the Bill had made on the motion for the first reading, as to the measure being made applicable to Bombay. He was not altogether prepared to say that the Bill could be extended to Bombay with advantage; but it would be published, and if the Authorities at Bombay should express a desire that that Presidency should be included in it, the necessary amendment might be made at a future stage. As at present advised, however, he did not think that the evils which were felt here existed in Bombay in any thing like an equal degree.

The Honorable Member, when he moved the first reading, had said that "the existing Law for Bombay was very much better than the existing Law for Bengal; for it authorized the Civil Power there to interfere only in emergent cases." That was very true; but that Law was about to be abrogated. It was comprised in Regulation XII of 1827 of the Bombay Code, which would most probably be repealed when the proposed Code on Criminal Procedure came into operation.

There was one Section of the Bill to which he was rather afraid to give an unreserved assent. It was the Section which provided that a double and even a treble rate of hire should be given when carriage or supplies were impressed. It appeared to him that this would have the effect of inducing owners of carts to refuse any and every rate of hire below a double rate on every occasion of the movement of troops, and thus to compel impressment in order that they might obtain impressment rates. In respect to supplies, in Bombay every Regiment on the march carried its own organized Bazaar with it; and the Chowdry was generally able, without any act of oppression, to provide it with all supplies required; and this he believed to be the principal reason why the evils complained of here did not exist in the Western Presidency.

MR. ALLEN said, he did not like to allow the Bill to be read a second time without saying how cordially he approved of its principle, and that he considered the measure as safe and practical as it was theoretically just. He was fully sensible that he could add little to the force of the arguments already advanced, and that he might well refrain from speaking in favor of the Bill. But he desired to say a few words, having had some personal experience of the matter; inasmuch as, during the years 1843 and 1844, he was the Magistrate and Collector of Cawnpore, and was called upon, in several instances, to provide both land and water carriage for troops, and for other Government purposes; and, from his experience, he could say that he found the present practice to be most oppressive; and he was quite sure that it might be safely abandoned.

He was particularly glad that Section III of the Bill not only repealed those Regulations which authorized impressment, but also made it penal to impress contrary to the Act; and he was so because Magistrates had frequently been called upon, and expected to provide artizans and others, for the impressment of whom there never had been any authority of Law. For instance, in the latter part of 1843 the Commander-in-Chief's Camp was formed at Cawnpore.

The Commissariat officer attached thereto, who was no tyro, and who afterwards received the honors of the Bath and a Lieutenant Colonelcy for his Commissariat services with the Commander-in-Chief, called on him, as Magistrate of Cawnpore, to provide about 100 artizans, of 34 different trades, to accompany the Commander-in-Chief's Camp throughout the Upper Provinces. These men were to receive no regular pay, but to depend upon chance employment for their remuneration. He held in his hand a list of the artizans required to go with the Camp all over the Upper Provinces; and he would read the designations of some of them. There were *attah* and *dholl*-sellers, tobacco-sellers and *paun*-sellers, oil-sellers, sweetmeat-sellers, butchers, bakers, butter-men, workers in leather, and workers in iron, carpenters, tent-menders, under the name of "*Khama Dozes*" and "*Para Dozes*," fowl-sellers, goldsmiths, (a laugh,) hookah snake-makers (renewed laughter), a class for whom there could be little employment with the present practice of not smoking hookahs (renewed laughter)—*hoondee-wallahs*, or writers of Bills of Exchange (renewed laughter,) and fishermen, who were to march by land with the Camp, and to fish in such unknown rivers as they might meet with on the road. He naturally demurred complying with this indent; on which, he was handed up to the Commissioner. (A laugh.) The Commissioner was no inexperienced man. He had been appointed to the Service before he (Mr. Allen) was born; and he wrote back to say that the indent must instantly be complied with in accordance with the practice which had been many years in force. He (Mr. Allen) then referred to the Head Police Officer, the Kotwal of Cawnpore, to find out how formerly the requisitions had been attended to. The Kotwal said that the practice had been to comply with such indents, and that, if he received the necessary order, he would get the men, and that he (Mr. Allen) would never hear any more about it. When further particulars were asked for, he said—"I shall tell the Chowdries or Heads of each trade in the Bazaar that so many men of his trade are wanted." The Chowdry of each guild would collect a purse from the men of the trade, which purse would be taken to a Native Official in the Commissariat, who, in some cases, would take it, and report that the men were in Camp; and in others, he would refuse it, and say the men must be produced, when the purse would be presented to one as remuneration for his going with the Camp.

He (Mr. Allen) represented to the Commissariat Officer, as respectfully as he could, the illegality of the demand, and the impossibility of acceding to it. On this, he was handed up to the Government; and the Commissariat Officer informed him that the Military Authorities in Camp were satisfied that they were justified in making the indent. Now, the authority on whom the Commissariat Officer chiefly relied, was the Head Staff Officer of the Camp, and he was then Deputy Adjutant General of the Army. He was now the Commander-in-Chief of the Forces in Madras. The then Lieutenant-Governor of the North-Western Provinces, Mr. Thomason, took the matter up, and the result was the issue of the order mentioned by Mr. Secretary Grant in his Note, prohibiting compliance with similar indents; and he had never heard that, since that order, Commanders-in-Chief, or Governors-General, on the march, had gone without fish, or butcher's meat, or other supplies. (A laugh.) The publication of this order in 1844 caused the Superintendent of Canals in the North-Western Provinces to fear that he should not be able to carry out his wishes without forced labor; and he remonstrated. To that remonstrance, Mr. Thomason replied—

"The difficulties experienced by you will always be felt when extensive works are carried on, in a thinly populated country. They are difficulties arising out of the nature of things, which arbitrary orders or illegal compulsion will not remedy. The true and effectual way of remedying them is by the constant extension of kindness, consideration, and thoughtfulness in all dealings with laborers on the spot, and in the devising of means for inviting laborers from a distance, and encouraging voluntary resort to the works.

"The Lieutenant-Governor would be loath, by especially authorizing harsher measures, to diminish the necessity for these latter and far more effectual expedients.

"They have often been successfully tried before, and have, no doubt, already recommended themselves to the adoption of your

good judgment. You will find patient perseverance in them to be crowned with success."

Since that time, the Canal works in the North Western Provinces had increased very considerably. In 1844, there were only the Jumna Canals. Since then, there had been constructed the Ganges Canal; and no difficulty had been found in obtaining voluntary labor for that great work. It had been said that it would be impossible to do away with impressment when there was a deficiency of carts; but he believed that what he had read against providing for a deficiency of laborers applied also to a deficiency of carts. Certain he was that impressment would not increase the number of carts. It would not make more if there were few. Nay, it would unmake the few; for, as the Honorable Member opposite (Mr. Eliott) had observed, carters would throw the wheels down the wells, and the bodies in the jungle. It would not attract carts from other districts. On the contrary, it would send them away.

The only circumstances under which a deficiency could be remedied by pressing were when most of the carts were already under contract or hire to other persons; and in such a case, it would be better to enact that a carter might break a contract when he hired out his carts to Government. In this case the carter would not suffer, but the Contractor; whereas the practice of impressment injured both carter and Contractor. In all cases, as there were carts to be hired, the Commissariat was not in a worse position than a private person. Mr. Thomason had well observed, as regarded boats, and it was equally true as to carts—

"The Commissariat Officers are the best customers in the market. If they offer a fair price, they ought to command all the tonnage they want at prices rather below than above the market rate, in consideration of the largeness of their dealings. When they have occasion to apply to the Magistrate, except on great military emergencies, it argues some defect in their arrangements; and the Magistrate must be very careful lest, by too ready a compliance, he abets injustice."

What the Honorable Member for Madras had said as to the necessity of sometimes pressing laborers for the repairs of embankments, put him in mind of an anecdote he had heard at Agra of the Rajah of the neighboring State of Bhurtpore. A breach having occurred in the embankment of a river, which the public safety required should be repaired at once, the Rajah of the Province, who had absolute authority in it, and could do with the people what he pleased, did not seize unwilling laborers to repair the breach, but went out himself with a basket of earth on his head. His example was followed by the whole population, and the breach was repaired without one act of impressment.

There was one little point of detail in the 3rd Section of the Bill, which he thought rather objectionable. The Section made it penal only for Revenue and Judicial Officers to impress means of transport or workmen, except as provided by subsequent Clauses. He did not see why the Section should not be amended so as to provide that whoever impressed means of transport contrary to the Act should be liable to punishment. It might be said that Revenue and Judicial Officers were the only Officers who were likely to impress; but the Commissariat would employ Contractors or Chowdries who would have badged Peons, and these Peons might resort to oppressive acts. The very first Despatch of Mr. Thomason, in the printed copy of his Despatches, referred to oppression caused by the Native Officials of the Commissariat taking forage for Government cattle by force, and injuring trees in providing fodder for Government elephants.

He would, therefore, leave out those words of the 3rd Section which confined the penalty to Officers of Police and Revenue, and make the Section general.

MR. CURRIE said, he had one remark to make as to the form of the Bill. Section 1 said—

"Sections II and VIII and Clause 7 Section IX of Regulation XI of 1806 of the Bengal Code are repealed. Sections III, IV, VI, and VII of the said Regulation and Regulation VI of 1825 of the same Code are modified, and their operation restricted, in the manner following."

It appeared to him that it would be very much better if all the first Sections of Regulation XI. 1806 were repealed, and such of them as were considered to be necessary were re-enacted in this Bill in the modified form which its prin-

ciple required. With regard to the provisions of the Bill, he would only remark, with reference to the Section which provided that double and treble rates should be given in cases of impressment, that he concurred in the doubt expressed by the Honorable Member for Bombay as to the expediency of requiring such rates to be given when it had been ascertained that a real and true emergency did actually exist.

MR. GRANT observed that, after what had been said, and so well said, on the general principle of the Bill, he should only weaken his case if he advanced another word in support of it.

But he must say a few words on one important point of detail, to which the Honorable Member for Madras and the Honorable Member for Bombay objected. This was the provision which required that double rates should be given on the rare occasions to which impressment would be restricted by the Bill. These Members of the Legislature showed a very great, and a very proper, concern for the financial interests of the Government in making this objection. Certainly, it was an objection which would not come from the people to whom the Act was to apply. He would explain why he proposed the adoption of this part of his plan. His opinion was that, when the rare emergencies contemplated by the Bill do occur, and it is necessary for the safety of the State generally, and for the good of the 150 millions in our Empire, to coerce individuals in a manner not warranted by the general Law, the evil ought to be made to fall as lightly as possible on the individual, and ought to be spread as widely as possible over the whole Empire. What is it to this Empire that, once or twice in a course of some years, when the general safety absolutely requires an extraordinary exertion, it may have to pay an extra sum for carriage? The revenues would not be swallowed up by that piece of extravagance! On the other hand, it mattered much to a poor cart-man to be forced away from his ordinary employment, and compelled to work at another place where his business does not call him? The very facts of the case showed that the ordinary rates must be insufficient remuneration; because, if the man felt them to be sufficient, it would be unnecessary to impress him. It is only because he feels them to be insufficient that impressment is required. That being so, would it not be only bare justice to give him more? He (Mr. Grant) did not stickle for any particular extra rate; but he was quite sure that the ordinary rate would not be sufficient, and he thought a double rate would probably be fair. He would illustrate his position by a case from one of the higher walks of life. If a professional man—for example, a Lawyer who is following his business in Calcutta—were sent up to Lucknow to work there for a month or more, should we think double fees an extravagant remuneration? If that is the case in our own sphere of life, there is no reason to suppose that it is not equally the case in humbler grades of labor. Additional remuneration for work done at a distance, and out of the ordinary course is as much the right of a man who follows the humblest trade as of a member of a liberal profession. It was unjust to a man who lives by letting out his cart and pair of bullocks, in a particular district, to a particular class of persons, to carry him away to a different district, paying him nothing for the inconvenience and the loss of his trade-connexion.

This was one reason for the double rate. But he (Mr. Grant) had another reason for pressing this point upon the Council. He felt fully convinced that it was to this provision that we must look to make the Bill self-working. It was on the red ink of the Military Auditor General that he relied for preventing the Act becoming a mere sham. The Honorable Member for Madras had read from a Minute of Sir Thomas Munro, which he (Mr. Grant) wished he had seen before he moved the first reading of this Bill. That Minute shewed that Sir Thomas Munro, one of the greatest of Indian statesmen—a statesman who was familiar with every petty business in his district, and who was as great in minute details as he was great in great matters—considered that the impressment of carriage and supplies was wholly unnecessary. The Madras Regulation authorizing such impressment was accordingly repealed. Nevertheless, the Government of Madras had allowed in practice the impress-

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ment of carriage to go on ever since. The papers annexed to the Bill showed that, in 1855, three Regiments were marched through the Marwar Territory, from Deesa to Agra, without one act of impressment—without one act of interference on the part of the Civil Power; the reason being that proper and timely arrangement had been made by the Contractors at Deesa. If this could be done in the case of three Regiments, it could be done in the case of every Regiment. Yet, although in Madras there is no Law to warrant the practice, and though we have authority and proof that it is unnecessary, carts are impressed to this day, under the futile and groundless pretence of necessity. Now, it was the Government, and not the sepoy, who would have to pay the difference between the ordinary and the emergent rates, when impressment is resorted to; and it was certain that, whenever the Government should be called upon to pay the impressment rate, the Military Auditor General would know the reason why. If the necessity arose from want of proper and timely arrangements, he thought it would not be the Government who would bear the loss

He was quite willing to consider the suggestions which had been made by the Honorable Member for Madras as to the impressment of labor for public works on occasions of sudden emergency. He did not mean to say that he was prepared to agree with the Honorable Member in all his observations on that point; but he felt that they deserved serious attention; and if the Honorable Member would allow himself to be named on the Select Committee on the Bill, his suggestions upon this, as upon every other point embraced by the Bill, would receive the fullest consideration.

MR. LEGEYT said, he wished to explain that he had not objected to the enhanced rates so much from a tenderness for the finances of the State as from a fear that the exceptional Clauses in the present Bill would, for the reason he had stated, become the rule and not the exception, and thereby the rates of hire of all description of carriage when troops moved would be doubled, which would be a grievous burden on individuals; for he did not suppose that the State would bear any part of the expense incurred by individuals for the carriage of their families and property beyond the regulated quantity.

THE CHIEF JUSTICE said, he ought perhaps to apologize for not having spoken before the Honorable Member on his right had replied to the objections made to his Bill; but he rose only to make one or two observations in addition to the excellent reasons which had been advanced in support of the provision to which objection had been taken by the Honorable Members for Bombay and Bengal. It seemed to him that the provision in question was rather in favor of Government than prejudicial to it—because the cases of emergency in which it was proposed to legalize impressment were assumed in both the 4th and 5th Sections to be cases in which the persons impressed were unwilling to give their carts even for double rates. There was no reason for preventing, or show of justice in preventing owners of carts from making what they could by the exigencies of the market. To compare small things with great, the Council must recollect what enormous freights had been earned by transports in the late Crimean war; and there was no reason why a hackery-man should not, as the owner of a first class merchant vessel did, make a profit of the necessity of the State, and take the benefit of the enhanced rate of hackery-hire consequent on an extraordinary demand for carriage. So far from being unjust, the provision appeared to him to be for the benefit of the State, inasmuch as it fixed a maximum.

On another Clause, he had at first felt some doubt. It was that part of the 7th Section which provided that, where impressed land carriage was retained beyond the next halting-place, a treble instead of a double rate of hire should be paid. When he first read the Clause, it appeared to him that it would be a sufficient check to enforce payment of back hire at double the rate current at the time and place of impressment. But the allusion which the Honorable Member in charge of the Bill had made to the Military Auditor General satisfied him that there was a good reason for this provision. Officers would always be tempted to force impressed carts to go on rather than themselves undergo the trouble of obtaining fresh carriage;

and nothing would tend more to check this practice than the knowledge that an extraordinary charge would call for an explanation of the circumstances in which it was incurred. The interesting speech of the Honorable Member for the North Western Provinces had shown that it was sometimes for the benefit of the Public that ill-defined powers should be pressed beyond their intended limits; since this brought the question prominently to the notice of higher Authorities and might occasion its reform. It would seem that, whatever the fishermen impressed at Cawnpore in 1843 might have caught, the Commissariat had caught a Tartar in his Honorable friend, whose resistance had occasioned a practice, which had long existed without legal foundation, to be brought to the attention of Government, and so put an end to.

MR. GRANT'S motion for the second reading of the Bill was then put and carried, and the Bill read a second time.

POLICE AND CONSERVANCY (SUBURBS OF CALCUTTA AND HOWRAH.)

The Order of the Day for the third reading of the Bill "to make better provision for the order and good government of the Suburbs of Calcutta, and of the Station of Howrah" being read—

MR. CURRIE moved that the Bill be recommitted.

Agreed to.

Sections III and X were passed after a few verbal amendments.

MR. CURRIE moved that the following new Clause be added to Section XXIII:—

"Whoever beats a drum or tom-tom, or blows a horn or trumpet, or beats or sounds any metal instrument or utensil, between the hours of ten at night and four in the morning, so as to disturb the repose of the inhabitants, except when permitted by the Magistrate on occasions of festivals and ceremonies."

The clause was agreed to.

Section XL provided for the filling up of unwholesome tanks, &c. on private premises, or of low marshy grounds.

MR. CURRIE said, the Select Committee had taken into consideration the remarks which the Honorable Member opposite (Mr. Grant) had made on this Section at the last Meeting, and agreed in thinking that it would be hardly fair to require proprietors to fill up grounds which had been made offensive by no act of theirs, but were in their natural state. They had accordingly amended the Section as follows:—

"When any tank or other excavation containing waste or stagnant water, the same being within any private enclosure, appears to the Magistrate to be injurious to health, or to be offensive to the neighbourhood, it shall be lawful for the Magistrate to require, by notice in writing, the owner of the premises to cleanse or fill up such tank or excavation; and if he do not begin to cleanse or fill up the same within one week after such notice, and do not complete such work with due diligence, the Magistrate, his officers, and workmen, may enter into the said premises, and do all necessary acts for the purpose aforesaid as he shall think fit; and the expense incurred thereby shall be paid by the owner of such premises, and shall be recoverable as hereinafter provided."

He begged to move that the Section be passed as amended.

Agreed to.

Sections LIII and LV were passed after amendments.

MR. CURRIE moved that the following new Section be inserted after Section LVI:—

"With respect to all matters expressly provided for by this Act, and within the limits subject to the same, the provisions of this Act shall be held to supersede the provisions of Act XXI of 1841."

Agreed to.

The Bill having been reported—

MR. CURRIE moved that it be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. CURRIE moved that Mr. Grant be requested to take the Bill to the Governor-General for his assent.

Agreed to.

IMPRESSMENT OF CARRIAGE AND SUPPLIES FOR TROOPS (BENGAL).

MR. GRANT moved that the Bill "to amend the law regarding the provision of carriage and supplies for Troops and Travellers, and to punish unlawful Impressment" be referred to a Select Committee consisting of Mr. Eliott, Mr. Allen, Mr. Currie, and the Mover.

Agreed to.

The Council then adjourned, on the motion of the Chief Justice.

—

The Chief Justice

Saturday, February 28, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice.	C. Allen, Esq.
Hon. J. P. Grant.	P. W. LeGeyt, Esq.
Hon. B. Peacock.	E. Currie, Esq.
D. Eliott, Esq.	and
	Hon. Sir A. W. Buller.

SONTHAL DISTRICTS.

THE CLERK presented a Petition from Inhabitants of Pergunnahs Nonee and Hurreepore praying that their Pergunnahs may not be removed from the jurisdiction of Pergunnah Muhummed Bazar, and placed within the jurisdiction of zillah Beerbhoom.

MR. CURRIE moved that it be referred to the Select Committee on the Bill "to amend Act XXXVII of 1855."

MR. GRANT asked if this was a Petition against the Act removing the Sonthal Districts from the operation of the general Laws and Regulations?

MR. CURRIE replied that it was a Petition against the Bill for revising the boundaries defined by that Act. Nonee and Hurreepore were two Pergunnahs which, under the Bill to amend the Act, would be left out of the special jurisdiction; and he believed that the Petitioners objected to their Pergunnahs being so excluded.

MR. CURRIE'S motion was then put and agreed to.

SALES OF LAND FOR ARREARS OF REVENUE (BENGAL).

THE CLERK presented a Petition from Zemindars of the 24-Pergunnahs relative to the Bill "to improve the Law relating to sales of land for arrears of revenue in the Bengal Presidency." The Petitioners object to Sections 41, 47, and 49 of the Bill; and pray that, instead of these Sections, others might be introduced, declaring the right of all under-tenants to sue defaulting Zemindars for compensation from loss sustained by them in consequence of such default.

MR. GRANT moved that the Petition be referred to the Select Committee on the Bill.

Agreed to.

SUBSISTENCE OF SMALL CAUSE COURT PRISONERS.

MR. LEGEYT moved the second reading of the Bill "to amend Act IX of 1850" (which constitutes the Small Cause Courts of the different Presidency Towns).

MR. GRANT said, he did not mean to object to the second reading of the Bill; but he wished to express his opinion that the rates of subsistence-money which it proposed for debtors detained under the Act, were too high. It fixed 4 annas a day as the maximum rate.

MR. LEGEYT replied, the Honorable Member would observe that the provision made by the Bill was that the rate should be not less than 1 anna or more than 4 annas a day. This would enable the Judges of the Small Cause Courts to allow any sum not less than 1 anna, or not exceeding 4 annas, according to the circumstances of each case. Act VIII of 1855, to amend the new Law of arrest on Mesne Process in Civil actions in the Supreme Courts, provided a maximum rate of 8 annas. This Bill would not allow more than 4 annas; and he might mention that that was the maximum rate allowed by all the Regulations in the Mofussil Courts.

The motion was carried, and the Bill read a second time.

THE STANDING ORDERS COMMITTEE.

MR. PEACOCK said, since the departure of Sir Lawrence Peel, the number of Members composing the Standing Orders Committee had been reduced to two. He should now propose that the name of the present Chief Justice be added to the Committee.

Agreed to.

IMPRESSMENT OF CARRIAGE AND SUPPLIES FOR TROOPS (BENGAL).

MR. GRANT said, he wished to supply an omission which he had made last Saturday. He had intended to move, on that occasion, that General Low should be one of the Members of the Select Committee on the Bill relating to the impressment of carriage and supplies, but the Honorable Member's name had escaped him. He now begged

to move that General Low be placed on the Committee.

Agreed to.

LAND CUSTOMS (BOMBAY.)

MR. LEGEYT moved that a communication which he had received from the Government of Bombay, relative to the Bill "to make better provision for the collection of Land Customs in certain Foreign Frontiers of the Presidency of Bombay," be printed.

Agreed to.

CRIMINAL PROCEDURE.

MR. PEACOCK gave notice that, on Saturday next, he would move the second reading of the Bills for simplifying the Procedure of the Courts of Criminal Judicature in the three Presidencies and in the North Western Provinces.

The Council adjourned.

Saturday, March 7, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President, in* the Chair.

Hon. the Chief Justice.	D. Eliott, Esq.
Hon. Major General J. Low.	Charles Allen, Esq.
	P. W. LeGeyt, Esq.
Hon. J. P. Grant.	E. Currie, Esq. and
Hon. B. Peacock.	Hon. Sir A. W. Buller.

MESSAGE FROM THE GOVERNOR GENERAL.

The following Message from the Governor-General was brought by Mr. Grant and read:—

MESSAGE No. 99.

The Governor-General informs the Legislative Council that he has not given his assent to the Bill which was passed by them on the 21st February 1857, entitled "A Bill to make better provision for the order and good government of the Suburbs of Calcutta and of the Station of Howrah."

On the Third Reading of that Bill, motion was made to recommit it under the 87th Standing Order of the Legislative Council, which permits this to be done for the purpose of considering any amendment of the Bill.

The amendment consisted in the introduction of a Clause forbidding the beating of drums or the blowing of horns between certain hours, except when permitted by the Magistrate on the occasion of festivals and ceremonies.

This Clause was inserted by the Committee, and the Bill was, at the same sitting, read a third time, and passed.

In the opinion of the Governor-General, the Clause is one which it would have been proper to publish for general information, under the 85th Standing Order, for such space of time before passing it into Law as to the Legislative Council might seem fit.

It treats of a matter not referred to in any other part of the Bill, and to which, therefore, it may be presumed that attention had not been given in any quarter whilst the Bill was before the Legislative Council.

It restrains the Native Community in a custom to which a part of them attach importance, and which has hitherto prevailed uncheckd by the Law in the places to which the Bill applies.

Those who will be restrained by the Clause have had no opportunity of making their views of it known to the Legislative Council through any channel.

Such being the case, it appears to the Governor-General that the course which has been followed is not in strict accordance with the spirit in which the Rules of the Legislative Council have been framed.

For these reasons, respectfully stated to the Legislative Council, the Governor-General withholds his assent to the Bill.

By Order of the Governor-General.

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 6th March 1857.

THE CLERK brought under the consideration of the Council the following Petitions:—

SINGAPORE PORT-DUES.

A Petition of Merchants, Traders, and other Inhabitants of Singapore,

against the levy of Port-dues in the Port of Singapore.

STAMPS.

A Petition of Sowkars, Merchants, and other Shop-keepers of Tannah in the Bombay Presidency, complaining of a recent order of the Sudder Court at Bombay requiring Samaduskhuts or written acknowledgments of debts to be written on stamped paper to render them valid documents under the provisions of Section X Regulation XVIII of 1827.

LANDS FOR PUBLIC PURPOSES.

MR. ALLEN presented the Report of the Select Committee on the Bill "for the acquisition of land for public purposes."

CRIMINAL PROCEDURE (BENGAL.)

MR. PEACOCK moved the second reading of the Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in Bengal, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction."

SIR ARTHUR BULLER said, he had intended to have relied entirely on the understanding that no Member was to be considered as pledged to any part of this Bill by his vote for the second reading of it, and to have abstained from expressing any opinion until it should have come before the Council in Committee; and it was now only with reference to that part of the Bill which affected the present privileges of British subjects that he ventured to trespass upon the indulgence of the Council.

He was anxious to submit his views as early as possible to the consideration of the Council and of the Public, because they did not go the full length either of the scheme of the Blue Book on the one hand, or of the extreme demands of the Petition which he had lately seen circulated, on the other; and because they suggested a middle course, calculated, he really believed, to do substantial justice to all, and to extricate the Legislature from a very serious difficulty.

The Council had not yet had to deal with any question on which public feeling had been so much excited. Nor was it a sudden or transient excitement, lightly got up and easily to be allayed. These murmurs, these remonstrances that we now heard, were but the angry echoes of that old protest which had systematically, resolutely, vehemently been repeated by successive generations of British subjects at every attempt to make them amenable to the Criminal Courts of the Mofussil.

It might be that the apprehensions which they entertained were exaggerated. It might be that, in their partiality for their accustomed tribunal, they unfairly disparaged the tribunals of the Mofussil. But, at all events, this was clear and manifest beyond all doubt—they did look with an unfeigned and sincere, even if it were an unfounded alarm, not upon this *repetition* of those former attempts, but upon this attempt, as they said, to place them in a worse position than ever had been contemplated by the blackest of previous Acts, and to consign them to the tender mercies of a Moonsiff.

Then, who were they who thus came forward with this language of remonstrance? Were they some ignorant, or insignificant, or worthless section of our community? Far from it. They represented the life, the vigor, the best hopes of our Indian possessions. To the industry, the skill, the indomitable energy of the British speculator in the Mofussil, it was no little that we already owed; and it would be the height of impolicy, as well as of ingratitude, heedlessly to discourage so valuable a subject in the onward course of improvement along which it was his mission to lead the destinies of this country.

The case, then, of these Petitioners at all events came before the Council recommended by the earnestness of their complaint, and by the high and important character of the complainants.

But above all, let us bear in mind that their prayer was, not that we should bestow upon them a new privilege, but that we should not take away from them one long enjoyed and incalculably prized. He was confident, therefore, that the Council would approach this question in a forbearing spirit;—that, if it thought that the Petitioners were sometimes unreasonable in their demand or intemperate in their language, it

would not angrily shut the door in their face, but would give their Petition a patient and indulgent hearing; and that, if it could not concede to them all they asked, it would, at all events, not take from them one jot more than it felt compelled by the strictest necessity to take.

The first question which the Council had to determine was, ought the present privilege of British subjects to be tried before the Supreme Court alone any longer to be maintained? He had no hesitation in saying that, in his opinion, the answer ought to be in the negative. He could not, for a moment, resist the strong, conclusive, practical arguments for the immediate abolition of the privilege. Its maintenance either entailed intolerable hardships upon honest men, or ensured impunity to crime. It was easy to appeal to the records of the Supreme Court, and to show how few Europeans were in fact brought down for trial from distant parts. But he affirmed that those very records afforded the best illustration, not of the harmlessness, but, on the contrary, of the mischievous inefficacy of the present system. Did the Council suppose that, in their scantiness, they accurately represented the amount of crime committed by Europeans in the Mofussil? Far from it. But they did accurately represent the extreme difficulty of prosecuting distant offenders. And if the grievance was great now, as our territories increased and British enterprize pushed forward, it would daily become more and more intolerable. He therefore thought that the privilege could no longer be maintained to its present extent; and the question remained—"To what extent will you take it away?" "Give us equally good laws and equally good tribunals in the Mofussil," said they, "and we don't want to drag others, or to be dragged ourselves, from inconvenient distances to the Supreme Court. Give us our inalienable, indefeasible right of Trial by Jury!" He confessed that he did not understand this inalienable, indefeasible right. He did not believe that it existed in any authentic theory. He was sure that it did not exist in fact. The patriot pick-pocket who was to tell the London Magistrate, "Nullus liber homo imprisonetur, &c.," would be referred to the Metropolitan Police Act, and summarily sent to prison in spite of Magna Charta; and certainly the British subjects who had sought their fortunes in our colonies must long since have discovered that, if they carried any such right about with them, they carried it to very little purpose. We gained possession of Ceylon he thought in 1796; but trial by Jury was not introduced there till 1810, and then only in the Supreme Court; and instead of the duodecimal unanimity of which Britons were so fond, the verdict of a bare majority out of thirteen jurors was made sufficient for the conviction of any offence. To this very day, the District Judge, with no other aid than that of three sleepy, useless, powerless Assessors, may imprison a British subject for one year, and give him a hundred lashes; and the Police Magistrate, without even that nominal aid, may imprison him for three months, and give him twenty-five or fifty lashes.

However, he thoroughly recognized the right—call it, if you please, the indefeasible right—not only of every British subject, but also of every subject of the Crown to be as well governed in every way as circumstances would permit; and if Trial by Jury was the best form of trial, and if it was available, or, even if not available, if it could be made available to British subjects without working injustice to others—then, he said, by all means let them have their trial by Jury. Of the merits of that trial, he would say no more than to remark that he believed the faith in this old creed seemed in England to have been somewhat shaken of late, and that opinions as to its excellence were supposed to depend very much upon the point of view from which it was looked at by a person likely to commit crimes himself and calculating the chances of escape, or by a person anxious to devise the best means of repressing crime. As a protection against political oppression, the Jury-system was, no doubt, the best and surest safeguard; nor, if extended to Natives, would it, he thought, be without its wholesome influence. It would be the means of making them acquainted with the laws of their country, and giving them as it were a personal interest in the administration of them, and thus of raising them in their own estimation, and generally in the social scale.

Sir Arthur Buller

As regarded the substantive law of crime which this Code proposed to offer to British subjects, they had no longer the same grounds of complaint which were available to those who had gone before them, and who were able to say —"In our Supreme Court, we are triable by our own English Law; but you propose to give us in its stead the Law of Mahommed, and of imperfect Regulations." The remonstrants of the present day were well aware that, by the time this Bill should become Law, a new Criminal Code would be in force throughout all India; and that British subjects, whether put upon their trial before the Supreme Court or before Courts in the Mofussil, would be triable by that new Law, and that alone. He confessed that he did not quite know what the law of evidence in the Mofussil was, or how far it was identical with that which was administered in our Court. But this he thought was manifest, that, if we had everywhere one uniform law of crime, we should also have one uniform law of evidence by which crime was to be proved; and, therefore, he did hope that a clear, simple law of evidence—if such a law was not more easy to desire than to frame—would be brought into operation simultaneously with the new Penal Code and this new law of Procedure.

And now, then, as to the Tribunals which this Code proposed to give to British subjects in exchange for their Supreme Court. They were the Session Court, the Magistrate's Court, and two classes of Subordinate Courts.

To the first of these Courts, British subjects would become amenable for every offence, no matter how grave; and liable to every punishment, no matter how severe.

The Magistrate had the power of imprisoning them for two years.

The Subordinate Tribunal of the 1st Class, which was to be presided over by First Assistants to Magistrates and Principal Sudder Ameens, might imprison them for one year; and that of the 2d Class, which was to be presided over by Second Assistants to Magistrates and Moonsiffs, might imprison them for three months.

It was against these Tribunals that British subjects protested—against all as incompetent, and against some as open to the evil influences of personal prejudice and antagonism of race.

They referred us to the Penal Code, which, in its anxiety to provide for every possible offence, drew within its wide definitions, acts which men were sure to be frequently committing without imagining that they were crimes; and they showed us that, under its provisions, a person could hardly open his mouth, or move his hand, or even move the air, without committing an offence punishable with imprisonment. They asked us to picture to ourselves the sort of places which, in small localities, were available for imprisonment, and to consider well what sort of punishment imprisonment was to a European, even in the best regulated Jails. They referred us to the Calendar of the Supreme Court, and they showed us that two years was the maximum of imprisonment which that Court thought it safe to award to such persons in this climate: and they implored us not to trust a power so susceptible of abuse to unfriendly or inexperienced hands. They asked us to consider their position in the Mofussil—how perpetually they were brought into conflict with influential Natives not over-scrupulous as to making false charges, or supporting those charges with false evidence. They showed us how all persons in the locality became mixed up in these disputes—how it had come to pass that the subordinate Magistracy looked upon them, and that they looked upon the subordinate Magistracy, as natural enemies; and they declared they had no hope of obtaining impartial justice in our inferior Courts. They pointed out to us the defects of the Company's judicial machinery, whereby the administration of criminal justice must, for the most part, be entrusted to mere boys, or, at the best, to inexperienced young men, who were shifted one day from the cutcherry to the salt-field, to be removed the next to another cutcherry or another salt-field, again, on some future day, to turn up upon the Bench; and they asked us why, in this learned profession, professional learning was the only thing not required.

Then, as regarded Moonsiffs, the still unforgotten animosities of race introduced a new element of distrust. Nor would this seem to be wholly without

foundation. He found the following statement in the *Friend of India* (which should be a good authority on the subject) in an article by no means favorable to the larger pretensions of British subjects :—

"There are many, particularly Mahommedans of the old school, whose hostility to Europeans, as such, is of the most envenomed character. The Magistrate lately removed from Serajgunge would probably have put every European in the station in prison could he only have obtained the chance. The antagonism between the races is becoming every day more marked."

Now, at all events, in these representations, the Petitioners were speaking out clearly enough; and if any weight was ever to be attached to their representations, it ought to be attached to those that they now made.

"But no," he heard it said, "the only way to get the imperfections of the present system remedied, is to give these clamorous British subjects a taste of it, and then they will cry out, as Natives cannot cry out, and the system will be remedied." But surely, they were crying out loud enough now; and surely, we might be satisfied with this foretaste of it which we were giving them, without waiting for the experiment of any actual tasting! They said in very plain terms—"For Heaven's sake, don't throw us into this fire. We shall be burnt alive." And was it fair to answer them by saying—"No! you have no right to cry out, till you are burnt; and when you are really burnt, you'll cry out so much the louder, and then you'll get what you want?" He thought we need not require all this proof. If we were really satisfied that these were fiery places, he thought that we need not insist on the production of singed hair or charred stumps, but that we might take legislative notice of the fact that fire will burn. And being fully persuaded that our imaginations were perfectly competent to guide us to safe conclusions in these matters without the necessity of any personal experiments, he would ask any honorable gentleman whom he saw before him, whether, if his lot compelled him tomorrow to take up his residence at some factory in the Mofussil, he would not feel a little alarmed at the possible risk which he would run of being imprisoned by some envenomed Mahommedan, for some imaginary or for some Code-born offence from the 15th day of March to the 15th day of June in some cutcha hovel at Feverpore or Cholerabad? But he would ask him still further—did he really think that the boys who acted as Assistant Magistrates, or that the Magistrates themselves, wholly untrained as they were to their profession, and wholly unaided either by a Jury or by any competent Bar—did he really think that they were fitting depositories of the vast powers proposed to be entrusted to them? He imputed to these gentlemen no fault save that of youth and inexperience. Fine, manly, intelligent young fellows they were—all fully his equals, he was free to admit—many greatly his superiors in natural abilities: but still, the fact was undeniable, they were young and inexperienced; and youth and inexperience were not the best qualifications for the Bench. He confessed it appeared to him a just matter of reproach to this great country that, with its ample means and unlimited resources, it had effected no greater reforms in its judicial system. He did think that it was a matter of reproach to us that, while elsewhere every one was insisting on getting the right man for the right place, we were still content here to go on trusting to the miserable chance of routine. He did not pretend to say that, in order to administer satisfactorily the laws of this country, the same degree of learning was necessary as would be necessary to administer the law in England; but still, surely some sort of training was indispensable, and judicial habits did not come more instinctively to men's minds here than they did elsewhere. He could not imagine any great difficulty in establishing here a regular Judicial Service, which, in a few years, would provide us with competent functionaries for every grade. But if there were such difficulty, there were plenty of ready-made lawyers to be had, whose interest it would be to place their services at our disposal for the remuneration which it would be our interest to give. At all events, some better system was beyond all question attainable, and therefore should be attained. Direct every effort and the necessary number of Rupees to that end and you will soon have a triumphant answer for any one

who presumes to question the competency of your Courts.

But then, what was to be done with British subjects in the meantime? "Leave us as we are," said they, "until your Courts are reformed." He answered—"No! The evils of the present system admit of no delay. They are intolerable already, and they are becoming more and more so every day." On the other hand, say the *soi-disant* advocates of equality—"Place all alike upon the same footing at once. If the tribunals of the Mofussil are as bad as they are represented to be, they must be equally bad for Natives, though the Natives may not be able to appreciate their imperfections; and why should not all share alike the evil till it can be remedied?" But why should they? Would the evil be in any way the less to the Native if it were felt also by the European? If it were an evil which was susceptible of being increased or diminished according to the surface over which it was spread—then he could imagine some reason in the argument. But if we found a certain number of persons subject to an imperfect system which we admitted must be remedied, and which we avowed our intention of remedying as soon as possible; and if we found at the same time certain others who, by no force or fraud of theirs, but by our own deliberate Acts, and the Acts of the Imperial Legislature, had been specially exempted from it, and were painfully alive to its imperfections—upon what principle would we compel the latter to become fellow-sufferers with the former? Certainly, not on the principle of the greatest happiness of the greatest number. Certainly, not on the principle of doing equal justice to all. He could imagine our doing so on no other principle than that of doing equal injustice.

No one could object to any thing in the shape of legislative favoritism more strongly than he did—no one more strongly than he did, to exclusive privileges which worked real injustice, or excited abiding discontent. No one could subscribe more readily or more loyally to the doctrine of equal laws for all. But then, while holding these principles steadily in view, he could not shut his eyes to the actual state of things around him. He was not there a philosopher, to propound a perfect theory, or to enunciate metaphysical truths. He was simply a legislator dealing with men and things as he found them—dealing with a state of Society full of anomalies, and having to carry out a great change in the manner least obnoxious to the different interests which must be affected by it. Well! What did he find? He found, on the one hand, a small but highly civilized community, long accustomed to good laws and to a good administration of them. He found, on the other hand, vast masses but lately emancipated from barbarism, and inspired with no traditionary reverence for equal laws or incorruptible justice. The former contrasted the Mofussil Courts with those by which they were now protected, and they deprecated a change with horror. The masses found in these Courts a safeguard far better than any that their forefathers ever enjoyed or dreamed of, and they accepted them with perfect content. Well, then, were these two classes really standing on equal ground, and were we really measuring out equal justice when we said—"These Courts, if good enough for the one of you, are good enough for the other." He affirmed that such an equality was a miserable sham; and that, in our anxiety to establish equality in appearances, we would be establishing the grossest inequality in fact. He admitted that, with us Englishmen, the bare semblance of inequality excited immediate discontent. We chafed at the idea of any one being permitted privileges which were denied to ourselves; and, unamiable and selfish though the feeling might often be, yet it was by the influence of such feelings that many of our most valued liberties had been achieved. But did we find the Natives animated by these feelings even in respect of the large privilege at present enjoyed by British subjects? He thought not. They objected to it, not from any constitutional or philosophical enthusiasm in favor of an abstract principle, but simply because they saw and felt that it had become a practical nuisance. He did not believe that they felt it any grievance that British subjects should be tried by Juries while they were triable by Judges alone. They knew nothing about our Jury-system; and, he believed, neither sought the bene-

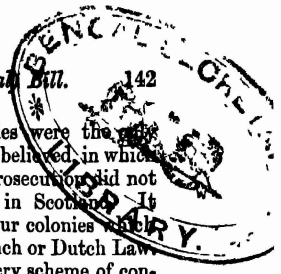
fit of it for themselves, nor grudged it to those who had a fancy for it.

Well, then, if the inequality to which he proposed to give a temporary tolerance was not really felt as a grievance by those who were apparently the least favored, it was stripped of all that made inequality most odious and intolerable; and if we were called upon to choose between one or the other of these two evils, —either to force British subjects into Courts which they distrust, and which we ourselves admit to be unfit for them;—or to retain for them awhile certain modified privileges which they highly prize, and which no one grudges to them—he had no hesitation in accepting the latter part of the alternative; and in so doing, while he acknowledged that he was offending in terms against a wholesome principle, he had the consolation of knowing that he was rescuing a deserving body of men from a palpable injustice, and doing nothing, at the same time, calculated to do real injustice to any one else, or even to make any one else fancy that injustice was being done.

At all events, the framers or admirers of these Codes in their integrity, could have no horror of such amount of inequality as he could be charged with wishing to retain. Surely, when they limited Trial by Jury to certain registered classes, they, nominally at all events, and perhaps unnecessarily, did violence to the principle of equality. For why, if Trial by Jury were the best form of trial, should not the Natives have a right to be tried before the Session Court by a Jury as well as Europeans? If the answer was that competent Natives could not be found to act as jurors, nor a sufficient number of persons of other classes to sit in all cases without obvious hardship to such persons—that, he thought was a sufficient answer to the objection, and he was not so enamoured of equality as to refuse to avail himself of the benefit of Trial by Jury to any extent that it was practicable, simply because, from the poverty of means, he could not avail himself of it on all occasions.

Again, when the Civil Code gave a right of appeal in cases where the amount in dispute was above fifty Rupees, and none where it was below, was it not doing violence to the principle of equality? Indeed, was it not, in fact, giving the rich man a right which it denied to the poor? The suit under 50 Rupees might place at stake the little all of two poor litigants. A demand above that amount might be a mere drop in the ocean to the opulent Zemindar. Yet the poor man who was absolutely ruined by an erroneous decision, had no remedy; while the slightly injured man of wealth had the fullest opportunity of redress. This was inequality; but it was one, among many others, which the exigencies of circumstances forced upon us. The Codes of Criminal Procedure now under consideration certainly steered clear of this inequality by allowing appeal in every case; but in so doing, it simply rendered its whole scheme impracticable; and he quite agreed with his Honorable friend on his left (Mr. Grant), in his admirable speech on the former Procedure Bills, that the right of appeal there given, limited though it was in comparison with the Bills now before the Council, was still far too extensive to give a fair chance of success to any available scheme.

But while he instanced without any horror these deviations from the principle of equality and the scheme of the Commissioners, there was one other such deviation to which he could not help drawing attention, and on which he confessed he looked with very different feelings. He referred to that most extraordinary provision by which an exclusive right to be tried before the Session Courts was reserved to certain four classes of public servants—namely, to Judges of every description—to all members of the Covenanted Civil Service —to all Officers of the Queen's and Company's Army—and to all Officers of the Company's Navy. He could hardly believe his eyes when he first saw this provision in the Blue Book. He could hardly believe that, at the very time its authors were professing to abolish on principle all distinction between Natives and Europeans—distinctions which, merely as distinctions, the Natives cared very little about—they should have gone out of their way to invent this new distinction between different classes of British subjects; and that they should have selected as the objects of exclusion, precisely those who had always been most cla-



morous for the maintenance of their ancient privilege, and who would be so sure, not only to resist such an attempt on principle, but to resent with all the bitterness of insulted pride, an act of favoritism so offensive, so uncalled for, and so palpably unjust.

Well, he had now shown, he trusted to the satisfaction of the Council, that, on the one hand, the privilege at present enjoyed by British subjects of a resort in all cases to the Supreme Court could no longer be permitted to exist; and, on the other hand, that it would be unjust to hand them over to the inferior tribunals of the Mofussil until those tribunals were reformed. There still remained the question, what was to be done with them in the meantime? He confessed he saw no difficulty in suggesting an adequate provision. He would simply extend to all British subjects the exemption limited by the present Bill to the four before-mentioned classes of public servants. But he did not mean the exemption to apply to offences punishable only with fine, or to offences which, though punishable with fine or imprisonment, the Magistrate before whom the complaint was brought, might consider sufficiently punished by a fine.

He conceived that the Session Courts, presided over by a more experienced class of public servants, as they would be, and partaking, as he hoped they would at once, of improvements similar to those suggested by his Honorable friend for the Zillah courts, would at once be safe tribunals to offer to all British subjects; and they certainly would not become the less safe when, at a future day, they should become manned by Judges who had had the advantage of some such sort of preliminary training as he had this day ventured to recommend.

In conclusion, he would earnestly bespeak the consideration of the Council, especially of that portion of it which had access to the public purse, in favor of one more suggestion which he would make for the improvement of the administration of Criminal justice—and that was the introduction of a system of public prosecution. The Code before us almost proceeded upon the assumption that it must sooner or later be worked by means of some such machinery. England and Ireland and the purely English colonies were the only civilized countries, he believed, in which a system of public prosecution did not prevail. It prevailed in Scotland. It prevailed in those of our colonies which were governed by French or Dutch Law. It found a place in every scheme of continental jurisprudence; and, judging by the progress which it had made among thinking men in England, he should not be surprised if, before very long, it was introduced there also.

And he must say, that, if there was any country in the world in which such an institution was required, it was eminently so in one like this, where the tendency to bring false charges so universally prevailed: and more than ever would it be desirable when the Criminal Code came into force, with its tempting variety of opportunities for the maliciously disposed. But he trusted that, if the Council did establish such a system, it would establish it thoroughly and well; that it would make no falsely economical attempts to avail itself of machinery which was wanted for other purposes; but that its Public Prosecutors would be Public Prosecutors and nothing else.

He did not think it would ruin our finances, and he was sure it would greatly assist the administration of Criminal justice if there were a competent Public Prosecutor in every Zillah, or in every two or three Zillahs according to their extent, without whose fiat no person should be put upon his trial before any Session Court, and who should himself personally conduct every prosecution. Whether his services could be made available in any way to the inferior Courts, his (Sir Arthur Buller's) local knowledge was too limited to enable him to say; but he should be inclined to think they might be, at all events to some extent.

Again, every such officer should be subordinate to one chief Public Prosecutor who should perform the like duties in relation to cases cognizable by the Supreme Court, and who should watch over, control, and be responsible for the entire system of public prosecution.

To Session Courts so constituted and so assisted, he had no hesitation in confiding the protection of every British subject. At all events, this was the best solution which, after much con-

sideration, he was able to give to this most difficult question.

THE CHIEF JUSTICE said, it was not his intention, when he entered the room, to make any observations on the Bills before the Council on this occasion; but as his Honorable and learned friend had, in his very able and ingenious speech, adverted to what was the most important question of principle on the face of the Bill, he thought it right to express the view which he entertained on the subject; and he unhesitatingly said that, if a vote in favor of the second reading of the Bill was understood to involve the affirmation of this principle —that the time for removing the exclusive privilege enjoyed by British subjects with respect to the trial of offences committed by them, and for making them amenable to the Criminal jurisdiction of the Mofussil Courts, had now arrived—he was prepared to give that vote. The subject was by no means a new one. The last occasion on which it was discussed, was when the predecessor of his Honorable and learned friend opposite (Mr. Peacock) brought before the Public certain Draft Acts which proposed to solve the question in a very crude manner. Those Bills had been considered by many to whom the Government had referred them, and, amongst others, by himself. He believed that almost all by whom the subject had been considered were agreed in condemning the proposed measure as precipitate; and that their principal objection to it was that it would not only render British subjects amenable to the Criminal Courts of the Mofussil, but would also subject them to a system of Law which was utterly strange to them —a system based on the Mahommedan Law. But he also believed that all of those persons who, as public functionaries or otherwise, gave their opinion under some degree of responsibility—he believed he might almost say all who gave a dispassionate opinion,—concurred in thinking that, so soon as this objection was removed,—so soon as there should be a common Criminal Code for the country, the exclusive privilege claimed by British subjects could no longer be supported. For his own part, he recollected that he had endeavored to meet, with what success it was not for him to say, the argument that the exclusive privilege of British subjects was, in its inception, unjust and anomalous. He had endeavored to shew—though this was rather a matter of historical curiosity than of political consideration—that the so-called privilege was a necessary consequence of the strange and anomalous way in which our Indian Empire had come into being. He had also insisted that, howsoever the privilege might have been acquired, it was the duty of the Legislature, if it determined to withdraw it, to do so with the greatest possible consideration for those who had so long enjoyed it; and both to provide a system of Criminal Law applicable to persons of that class, and to make the tribunals entrusted with this new jurisdiction as efficient as possible. But he had even then admitted that, so soon as there should be a uniform system of Law for all classes, European and Native—a system which British subjects could not say had been derived from a fountain to which they were strangers—the exclusive privilege which they then enjoyed ought to cease. He had given that opinion in 1850. Since that time, whatever evils had existed previously in consequence of the exclusive privilege, had unquestionably increased. Our Indian Empire had not, perhaps, since that time, been extended to the westward; but its limits to the East, to the North, and to the South, had been widely extended. Three great Provinces, he might almost call them Kingdoms, had been added to it. And it must be remembered that, whilst the inconvenience of bringing persons down for trial in the Presidency Towns was thus increased, the progress made in public improvements—the Railway, the Electric Telegraph, and other public works—had all tended to introduce into the interior in greater numbers those Europeans who, as the Law now stood, could not be tried on a criminal charge, except in the Crown Courts. Therefore, the number of persons in the Mofussil who might be charged with criminal offences, and whom it would be a great inconvenience to try in the only tribunal in which they could now be tried, had largely increased. Before this increase in the class of "adventurers" as they had been termed—and he used the word in no offensive sense—the

practical evils and inconveniences of the existing system had been very much modified by the operation of the Mutiny Acts. But these of course did not affect the class to which he had last referred. He believed it would not be difficult to name three or four cases which had occurred within the very last year, and which, if a tribunal competent to try them had been at hand, would certainly have been tried, but which had not been tried simply because it had been thought inexpedient to send up to the Supreme Court for trial cases in which a conviction was doubtful by reason of the expense and inconvenience which that proceeding would involve. That was, certainly, not a state of things which ought to exist; and it appeared to him that it was quite impossible to go the length of those gentlemen who treated this immunity from the jurisdiction of the Mofussil Courts as an inalienable and indefeasible heritage and right, of which it would be unjust, as certainly it would not be inexpedient, to deprive them.

But he freely confessed that he had always felt, concerning another part of the scheme of the Indian Law Commissioners, which was embodied in this Bill, that it afforded grounds on which the European population might fairly complain of the proposed change. It seemed to him that the scheme was inconsistent in itself, in that it provided, or affected to provide, for British subjects and other persons who might be registered according to rules prescribed by the Governor-General in Council, some substitution of Trial by Jury; and yet proposed that so many offences involving very severe punishment should be dealt with summarily by the Magistrate or some inferior tribunal. He would not detain the Council by entering upon the general or abstract question whether Trial by Jury was a good thing or a bad thing. In his opinion, although there was occasionally a perverse or foolish verdict, the system was, in criminal cases, a good one; and it was remarkable that, in those countries on the continent of Europe which had made any advance towards constitutional liberty, Trial by Jury in criminal cases was generally one of the first improvements which were adopted.

But it appeared to him that it was unnecessary to consider the merits of Trial by Jury with reference to the Bills before the Council, because the scheme which those Bills embodied was grounded on the principle that it was expedient to give all of a certain class who should be tried in the Session Courts the right of Trial by Jury. Upon that provision, he might remark, as had already been remarked by his Honorable and learned friend, that the scheme itself was in this respect not one of absolute equality, or one which brought all classes of Her Majesty's subjects under one uniform system; because it contemplated that one class of those subjects should have the right to the Trial by Jury which it provided, and that another class should not have that right. But when he looked at the Schedule, annexed to the Bill, of the offences which were made punishable by summary conviction, it did appear to him that, in this matter of Trial by Jury, the Schedule went far "to keep the word of promise to the ear, and break it to the hope." It seemed to him to include the very offences upon charges for which European subjects were most likely to be brought before the Mofussil Courts. He alluded particularly to that class of offences which had relation to affrays concerning the possession of land, which had so often been under the consideration of the Council, and for the repression of which there had been three or four schemes before it. According to the Schedule, unless any of those offences were of so serious a character as to be punishable with imprisonment for a term exceeding two years, all persons accused, whether European or Native, would be subject to the jurisdiction of the Magistrate, or of Courts subordinate to the Magistrate. In the majority of cases, they would be subject to the jurisdiction of the Magistrate. It did seem to him that this was the very kind of offence, the trial of which it was least expedient to trust to the Magistrate who, from his position, was charged with the peace of the district. The vice of the selection which this Bill made of the cases in which Magistrates and Judges subordinate to them might convict summarily, seemed to him to be that the selection proceeded almost entirely on the principle that each func-

tionary should have the power of inflicting punishment to a certain extent, and should have jurisdiction over all offences which, in the contemplation of Law, deserved no higher penalty. In England, and in other countries, that was not the sole principle on which the trial of certain offences had been withdrawn from the cognizance of Juries, and made punishable on summary conviction. The course had been to consider, not only the amount of punishment due, but the nature of the offence and the difficulties of proof which the trial of such a charge would probably involve. The Council should consider that the feeling of British subjects, who expressed so much alarm at being made liable to the jurisdiction of the Mofussil tribunals in criminal matters, was not so much that of men who felt that persons of any race who committed such crimes as theft or the like would not be fairly tried; but it was a well grounded apprehension of being subjected to those false charges of violence and attempts at violence with which, in regard to Natives, the past history of the Mofussil Courts was so rife, and which constantly arose out of disputes respecting the possession of land. He believed it was notorious that, in almost every case of an affray in the Mofussil, the contending parties, after the chances of the field had been determined, proceeded to fight out their battle in the Courts; that each side charged the adherents of the opposite side, who had never been present at the affray, with having actively participated in it; and that the great contest was to see how many of the omlahs on each side could be convicted of having personally assisted in an affair from which, to judge from their well known nature, they would infallibly have run away. It did seem to him, therefore, that it would be rash to submit charges of affray for trial to a Magistrate who was interested in preserving the peace of the district, and who, in exercising his Police duties, must necessarily be in danger of acquiring some degree of bias against, or in favor of, particular persons within his jurisdiction.

Then, again, participation in some of these offences was generally a matter extremely difficult of proof, and such as might well require the intervention of the Session Court and the assistance of a Jury.

He also thought that there was considerable force in what his Honorable and learned friend had said as to the inexpediency of bringing British subjects under the subordinate Courts to be for the first time constituted by this Bill. He was not prepared to go so far as to say that he would allow no British subject to be amenable for trial to any but the Session Court. He had himself, only the other day, tried a case which might have been disposed of just as well by the Magistrate of Burdwan. It was a case in which a British subject, travelling by railway, had walked into the Railway Station on the line, and committed a petty theft, being taken red-handed in the fact. There was no reason why the Magistrate of Burdwan should not try a case of that kind just as a Police Magistrate of Calcutta would try a similar theft if committed in Calcutta. But he (the Chief Justice) did think that there was much weight in the objections which his Honorable and learned friend had urged with so much force to the giving, in the first instance, a criminal jurisdiction over British subjects to the Moonsiffs, or, possibly, to such very young and inexperienced men as Assistants to the Magistrates. He admitted that the exception proposed by his Honorable and learned friend would be a new anomaly, and he did not now pledge himself to support the exception. The scheme, however, of the Commissioners had, on the face of it, several anomalies, and, amongst others, that most palpable and glaring anomaly to which his Honorable and learned friend had referred—the provision which gave to four classes of public servants the exclusive privilege of being tried only by the Session Courts for any offence however punishable under any Clause of the Penal Code. He should have thought it incredible that a body like the Commissioners would propose to insert in a Code of Criminal Procedure designed for men of all races in India a provision so calculated to encourage and increase the feelings of antagonism and jealousy which existed, more or less, between that which had been termed the "adventurer" class and those who were employed in the public service.

He would not detain the Council with

The Chief Justice

any further observations, it being his intention to give his vote for the second reading. But he would offer one or two remarks upon one Chapter which formed part of the scheme as framed by the Commissioners, and which the Honorable and learned member opposite (Mr. Peacock) had retained in this Bill. He (the Chief Justice) doubted whether this Chapter did not more properly belong to that portion of the Commissioners' scheme which depended on the amalgamation of the Courts; and, therefore, whether it had been properly inserted in a Bill which applied exclusively to the Mofussil. He alluded to the Chapter which empowered the Advocate General to file criminal charges. If his memory served him aright, the public functions of the Advocate General were confined to the Supreme Court. He thought that the terms of the appointment were to the effect that he was to represent the East India Company in the Supreme Court. When the Advocate General went into the Sudder Court, he (the Chief Justice) believed that, in strictness, he stood there like any other Vakeel; though, by courtesy, that precedence which he had elsewhere, might be extended to him. He was not aware that the Advocate General had the powers of a Public Prosecutor in any Mofussil Court by virtue of his office, or of any of the Statutes which empowered him, in certain cases, to file criminal informations in the Supreme Court.

And whilst adverting to this particular Chapter, he wished to say that, in voting for the second reading of this Bill, he by no means pledged himself to adopt the proposal of the Commissioners that the charge should contain no specification of the circumstances of the particular offence, but merely state that the accused had committed an offence under a certain Article of the Penal Code. The Commissioners who proposed this had said that the circumstances would appear sufficiently from the depositions taken by the Magistrate. But by the Chapter relating to charges by the Advocate General, "the rules relating to the description of the offence in the case of charges by the Magistrate" were to apply. Yet, when such a charge was preferred, there need be no preliminary investigation; and, consequently, the accused might come to trial with no other knowledge of the case to be made against him than he could gather from the fact that he was charged by the Advocate General with having violated a particular Article of the Penal Code.

MR. GRANT said, it was not his intention to make any observations on that most interesting and important topic which had been the chief subject of discussion in this debate—namely, rendering British subjects amenable to the Mofussil Courts in criminal cases. On the second reading of the Code for reforming Civil Procedure, he had ventured to sketch the outlines of a counter-project of his own, which he proposed to bring forward. He rose to explain that the principles of his plan for Courts of Civil Procedure would apply equally to Courts of Criminal Procedure. By that project, each Divisional Full Bench, presided over by a Chief Judge, besides trying the most important civil cases in the exercise of its civil jurisdiction, would try also the most important criminal cases in the exercise of its criminal jurisdiction. He would mention one of the details of the plan, as he had it in his head, which he had not thought it necessary to explain the other day, as it was a point which might be considered to bear, in some degree, upon the argument of the Honorable and learned Member who had opened this debate. By his plan, every Divisional Full Bench Court would try, as a matter of course, all the Civil cases above a certain amount within the Division. The amount which had struck him as the best that might be fixed was Rs. 5,000, which is the amount that now makes a case appealable to the Sudder Court. But he proposed to give the Divisional Court the power, on Motion duly made before it, of calling up to itself, for special cause, any suit filed in any subordinate Court of the Division. Many cases may arise which, though within the jurisdiction of the lower Courts, it would be expedient, for obvious reasons, to decide by the best local Court available. Cases may arise in which the amount at issue is not large, but the novelty or the importance of the principle involved may make it desirable to try them before the best Court; or it may happen that circumstances give a peculiar local interest to a case, whether from the influential

position of the parties, or from any other cause, which may make it very desirable that the trial should be before the Court in which the people of the locality have the greatest confidence.

He proposed that the same principle should be applied to the criminal side of the Divisional Courts; and that these Courts should have the power of calling up for trial before themselves any criminal case which, for any reason, it might be particularly desirable for them to try. He thought that it might often be the exercise of a very sound discretion, if the Divisional Court were to call up to itself a case in which a British subject is charged. This would be a way in which a great part of the difficulty to which the Honorable and learned Member to his right (Sir Arthur Buller) had so ably adverted, would be got over, and, if so got over, he thought it would be got over by a mode better than that which the Honorable and learned Member had proposed. The Honorable Member's plan was that, to the four classes included in that very extraordinary Clause of exemption proposed by the Law Commissioners upon which the Honorable Member had himself most justly remarked, and which he (Mr. Grant) believed was supported by nobody, there should be added a fifth. He (Mr. Grant) disapproved of the provision in the Bill as it stood; and he should not disapprove of it the less if a fifth class were added to it. But he believed that the plan which he proposed, would, in most cases, practically attain the object which the Honorable and learned Member had in view; and it would do so without shocking people—for people were shocked at the proposed class-exemption—by establishing a principle of glaring inequality.

It would not be provided in the Law he intended to propose, nor would it be expected in practice, that the Session Court should call up before it every case in which a British subject is charged; but it would be expected that, in any case in which it should seem, for any reason, especially desirable that the trial should take place in the best Court available in the Division, the Divisional Court should call up the case for trial before itself, whether the defendant were a British subject or a native, a black man or a white man.

It was with him another objection to the proposal of the Honorable and learned Member (Sir Arthur Buller) that a fifth class should be added to the exemption Clause, that, if he (Mr. Grant) had his way, when this Bill should have passed through Committee, that exemption Clause would not be in it at all.

MR. PEACOCK said, he desired to make but a very few observations with reference to what had fallen from the Honorable and learned Member opposite (Sir Arthur Buller.) He felt it right, in order to prevent any mis-apprehension, and not in justification of himself, to remind the Council that, on moving the first reading of the Bill, he had stated that he did not pledge himself to all the provisions which it contained, but that he had inserted the Clauses as they had been framed by Her Majesty's Commissioners in order that the whole scheme might be fully and fairly before the Council and the Public, and that their opinions regarding it might be elicited. He certainly felt the full force of all that the Honorable and learned Member had said with respect to the Clause which exempted particular classes of public servants from the jurisdiction which the Bill provided for the rest of the community.

With respect to what had fallen from the Honorable and learned Chief Justice in reference to the Clause which enabled the Advocate General to file criminal charges, he would observe that, as he understood the Code prepared by the Commissioners at home, the intention was that the Advocate General should have power to prefer charges in the Criminal Courts in the Mofussil. Cases might occur which could be tried only by the local Courts in the Mofussil—political cases, for instance, in which it might be right to allow the Advocate General to file a criminal charge in the Court of Session without the intervention of the Magistrate. He had therefore thought it right to leave the Sections as he found them, and to authorize the Advocate General to file charges in any criminal Court whether in the Mofussil or not. If the suggestion as to the appointment of a Public Prosecutor made by the Honorable and learned Member opposite (Sir Arthur Buller) should be adopted, and he hoped it would be, that provision would be unne-

cessary; but until such an appointment was made, he thought that there would be no inconvenience from allowing the Advocate General to prefer criminal charges in the Mofussil Courts, in the same manner as in the Supreme Court.

It was not his intention to follow the argument of the Honorable and learned Member (Sir Arthur Buller), or to enter into a discussion of the question whether British subjects should be made amenable to the Company's Courts in criminal matters. He would merely observe that, after the best consideration which he had been able to give to the question, he had come to the conclusion that there ought to be no distinction between British subjects and Natives of the country. He could not conceive why, where a British subject in the Mofussil was accused of a crime which was punishable, for instance, only by fine, the complainant and his witnesses should have to travel all the way to the Session Court in order to support the prosecution. Even now, British subjects were liable to be fined by a Magistrate to the extent of 500 Rupees for assault and offences accompanied with force against the person or property of any Native of India. It appeared to him that it would be going a step backward to send such cases to the Courts of Session.

He thought it unnecessary to go farther into this question at present.

With respect to the remarks which the Honorable and learned Chief Justice had made upon the Schedule annexed to the Bill, he would mention that he had endeavored, as far as he could, to adapt the Schedule to what he understood to be the intention of Her Majesty's Commissioners and to the revised Penal Code which had been read a second time. But he rather agreed with the Honorable and learned Chief Justice that the principle upon which summary jurisdiction should be given depended, not so much upon the amount of punishment which could be inflicted, as upon the nature of the offence, and the difficulties which were likely to arise upon the trial.

He was glad to find that no Honorable Member had any opposition to offer to the second reading of the Bill, and he had listened with great pleasure to the admirable speech made by the Honorable and learned Member who had opened this debate, although he could not concur with him upon all points.

MR. PEACOCK'S motion was carried, and the Bill read a second time.

CRIMINAL PROCEDURE (NORTH WESTERN PROVINCES).

MR. PEACOCK moved the second reading of the Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in the North Western Provinces, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction."

The motion was carried, and the Bill read a second time.

CRIMINAL PROCEDURE (MADRAS).

MR. PEACOCK moved the second reading of the Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in Madras, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction."

The motion was carried, and the Bill read a second time.

CRIMINAL PROCEDURE (BOMBAY).

MR. PEACOCK moved the second reading of the Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in Bombay, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction."

Mr. LEGEYT said, when he came into the Council room, he was not aware that he would have had the satisfaction of hearing the lucid and able speeches which had taken place on the Bill for Bengal, and to which he had listened with great interest; and what had been said had for the most part his hearty concurrence. With reference to the Bill for the Presidency which he had the honor to represent, he considered that what had fallen from the Honorable Members who had stated, in so luminous a manner, their opinions respecting the Code of Procedure generally, was equally applicable to Bombay as to Bengal. Doubtless the extension of the criminal jurisdiction of the Mofussil

Courts was not now felt to be a matter of that paramount importance at Bombay which it was felt to be here, from the circumstance that, as yet, the number of British settlers in the Western Presidency was insignificant when compared with the large European community in the Province of Bengal. But as this Bill was intended to be one of permanency, the time might come when the objections urged against some of its provisions in Bengal would be echoed by the Public in Western India.

There were some points of detail in the Bill to which he wished to draw the attention of the Council, and of the Public to whom the Bill was about to be submitted for opinions and suggestions.

This Bill, like that relating to Civil Procedure, provided that witnesses should be examined without oath or affirmation, or any warning, as a necessary preliminary to their giving evidence. He had, on another occasion, when the Civil Procedure Bill was before the Council, objected to this wholesale sweeping away of all apparent safeguards and precautions against false evidence. What he had then said in reference to this provision in the Code of Civil Procedure, appeared to him to be equally, nay more applicable to the corresponding provision in the Code of Criminal Procedure; and he did hope that the publication of the Bill would elicit such opinions from the judicial officers in the Presidency of Bombay, and from others, as would assist the Council in determining whether all oaths and warnings to witnesses in Criminal cases could be safely dispensed with.

With respect to other points, he considered that the Bill would receive general approbation at Bombay.

In Chapter IX Section 10 Police Officers were prohibited to examine persons accused of crime. He looked upon this provision as most admirable, and one which would produce an immense improvement in the administration of criminal justice in this country. Coupled with the provisions made by Sections 14, 16, 19, and 24 of the same Chapter, he trusted the effect would be a decided and immediate improvement. Hitherto, at Bombay, it had not been permitted to the Courts to grant conditional pardons, and the reception of the evidence of an accomplice was preceded by an unconditional pardon. A prisoner charged with having committed an offence in concert with others, and whom it might appear desirable to admit as an approver, was told that he would be set at liberty if he chose and promised to give evidence against his accomplices; and if he accepted the offer, he escaped without punishment, except on the chance of a conviction for perjury, whether, at the trial, he fulfilled his promise or not. As might be expected, under such a system, cases depending on the evidence of an approver constantly broke down, and a failure of justice was the consequence. It had become very rare to offer pardons to prisoners, and the result was that testimony, which when duly corroborated, was most satisfactory, was lost, and in its place the most objectionable had been substituted—namely the confessions of prisoners before the Police, for the obtaining of which the most abominable practices were resorted to, and which, when obtained, was generally of the most unsatisfactory description. The exercise of the power conferred by Section 16 of the same Chapter, the examination of the Defendant by the Magistrate, was, he thought, free from all objection, and he was surprised and disappointed that a similar power had not been conferred on the Session Court. While an ill-regulated and improper course of questioning a prisoner by subordinate agency was most objectionable, a discreet and fair questioning of an accused person by a competent Court, before the Public, with each question and answer recorded, was highly beneficial, and would, he thought, tend to elicit guilt or innocence more than anything that could be devised.

There was one point in the admirable speech of the Honorable and learned Member to his right (Sir Arthur Buller) in which he thought his Honorable friend had arrived at an erroneous conclusion. He had understood his Honorable friend to say that the Natives of the Mofussil knew and cared but little for juries. Now in this opinion he must join issue with his Honorable and learned friend. He thought that he could state from long experience that the contrary was the fact, and that no form of inquiry was so popular, or, when properly conducted, so much trusted, as

that by punchayet, which is analogous to Juries. This was the sole ancient inquisition of the country in all matters of Civil dispute. In criminal cases, the Native Governments did not generally favor trials; but so far from the Natives of the present day regarding it with indifference, he believed that it would be preferred in every case by a man who wished for a searching and honest investigation. He had had considerable experience of it practically when sitting in a Court of justice, and, except in very few cases, had always received the greatest assistance both from Jurors and Assessors.

He would not detain the Council further, and should vote for the second reading of the Bill.

MR. PEACOCK'S Motion was carried, and the Bill read a second time.

CRIMINAL PROCEDURE (BENGAL).

MR. PEACOCK moved that the Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in Bengal, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction" be referred to a Select Committee consisting of the Chief Justice, Mr. Grant, Mr. Currie, and the Mover.

Agreed to.

CRIMINAL PROCEDURE (NORTH WESTERN PROVINCES.)

MR. PEACOCK moved that the Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in the North-Western Provinces, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction" be referred to a Select Committee consisting of Mr. Eliott, Mr. Allen, and the Mover.

Agreed to.

CRIMINAL PROCEDURE (MADRAS).

MR. PEACOCK moved that the Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in Madras, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction" be referred to a Select Committee consisting of Mr. Eliott, Sir Arthur Buller, and the Mover.

Agreed to.

CRIMINAL PROCEDURE (BOMBAY).

MR. PEACOCK moved that the Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in Bombay, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction" be referred to a Select Committee consisting of Mr. Eliott, Mr. LeGeyt, and the Mover.

Agreed to.

SUBSISTENCE OF SMALL CAUSE COURT PRISONERS.

MR. LEGEYT moved that the Bill "to amend Act IX of 1850" be referred to a Select Committee consisting of the Chief Justice, Mr. Eliott, Mr. Currie, and the Mover.

Agreed to.

The Council adjourned.

Saturday, March 14, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	D. Eliott, Esq.,
Hon. Major General J. Low,	C. Allen, Esq.,
	P. W. LeGeyt, Esq.,
Hon. J. P. Grant,	E. Currie, Esq., and
Hon. B. Peacock,	Hon. Sir A. W. Buller.

LAND FOR PUBLIC PURPOSES.

THE CLERK presented a Petition from the British Indian Association against the Bill "for the acquisition of land for public purposes."

MR. ALLEN moved that it be printed. As the Report of the Select Committee had already been presented, he would not move that the Petition be referred to them.

The Motion was agreed to.

CRIMINAL PROCEDURE (BENGAL.)

THE CLERK presented and read a Petition signed by about 1,100 British

subjects resident in Bengal, and not in the service of the East India Company, against the Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in Bengal, for simplifying the Procedure thereof, and for investing other Courts with Criminal Jurisdiction." The Petitioners prayed to be heard before the Council in support of their Memorial.

MR. PEACOCK moved that, as the Petitioners prayed to be heard before the Council, the Petition be referred to the Standing Orders Committee.

Agreed to.

BOMBAY UNIVERSITY.

THE CLERK reported that he had received by transfer from the Home Department of the Government of India a communication from the Government of Bombay, together with a list containing the names of the gentlemen appointed Vice-Chancellor and Fellows of the Bombay University, for insertion in the Act of Incorporation of that University.

PORT-DUES AND FEES (CALCUTTA.)

MR. CURRIE moved the first reading of a Bill "for the levy of Port-dues and Fees in the Port of Calcutta"

He said, the Council would probably remember that, when the Ports Bill was before it in Committee, the Schedule, which authorized the Executive Government to fix the rates of dues and fees to be levied in the different ports within a certain specified maximum, was struck out, and a provision inserted that the dues and fees then usually collected at the several ports should continue to be levied for one year after the passing of the Act, or until an Act should be passed to fix their amount. By an Act passed last year, the period limited by this provision was extended for a further term of twelve months. This term would expire on the 13th of August next.

It did not seem very clear whether the intention was that there should be a separate Act for each port, or that all the ports should be included in one Act, with a Schedule specifying the different rates determined on for the several ports. Considering how very differently some ports were circumstanced as compared with others, he thought that it would be better to have a separate Act for each. Take, for example, Singapore and Calcutta. The one was almost exclusively a port of call; whereas no ship ever entered the other except for the purpose of discharging or taking in cargo. This, and other important points of difference would probably render it expedient to enact provisions connected with the levy of Port-dues for the port of Calcutta which would not be suitable to Singapore.

But even if it was clear that it was intended to include all the ports in one Act, there would be this difficulty in the way—that, notwithstanding the length of time that had elapsed since the Ports Act was passed, the Council was not yet possessed of the information necessary to frame such a Bill. Then, after the Bill was framed and read a first and second time, it would be necessary to publish it for at least three months before it could be reported on and brought forward in Committee. The whole period now available for preparing a Bill and carrying it through its several stages was not quite five months. He thought it could scarcely be hoped that a general Ports Bill could be passed through the Council within the allotted period.

For these reasons, he had thought it incumbent on him, with reference to his special connexion with this Presidency, to take timely measures for carrying out the intentions of the Ports Act with respect to the Ports in Bengal; and, accordingly, he now introduced a Bill for the levy of Port-dues and Fees in the Port of Calcutta. There were two other Ports under the Bengal Government, Akyab and Chittagong, to which the provisions of the Ports Act had been extended; but he had not yet received the information necessary for preparing Bills for them.

With respect to the provisions of the Bill for Calcutta, Section I provided that a port-due at a rate not exceeding four annas for every ton of burden should be chargeable in respect of every vessel which should enter the port. The Light and Buoy Duties, with the duty of the Moyapore Magazine, amounted together to three annas a ton. Until the last two years, the proceeds

of these duties had not been sufficient to pay for the maintenance of the Lights and Buoys; but the large increase in the shipping during those years had raised the receipts to an amount exceeding the expenses. If the arrivals of ships should continue at the same rate, no increase of duty would be necessary, so far as the expenses of the Lights and Buoys were concerned. But if they should fall off—which was not improbable, for he understood the number of vessels now in the river was much less than the number this time last year—and any considerable improvements should be determined on—as the employment of dredging vessels for keeping the Channels clear—it would be necessary to increase the duty; and there would be the less objection to this if the one anna tonnage duty, which was now levied under the Merchant Seamen's Registry Act on all ships entering the port, should be abandoned. In that case, a consolidated Port-due of four annas a ton would impose upon ships entering the port no heavier burthen than the aggregate amount of the several duties to which they were now liable.

He had spoken of this Port-due only with reference to the expense of Lights and Buoys, and of the possible improvement of the channels leading to the Port. The expenses connected with the Conservancy of the Port itself—the pay of the Harbor Master's Department, and other charges—were defrayed from the hire of the Government moorings, and fees charged for services performed by the Harbor Officers. He did not think it desirable to interfere with this arrangement. Some of the fees were, perhaps, unnecessarily high; but as the receipts of the harbor were at present somewhat in excess of the expenditure, they would admit of reduction.

Section III provided that the Port-due chargeable in respect of Dhoonies and country vessels employed in the coasting trade should be at a rate equal to one-half the rate chargeable in respect of other vessels; and that such due should not be paid oftener than once in sixty days by the same vessel. At present, these vessels, when they paid at all, paid more than double the rate charged to other vessels. This was contrary to all principle; for on account of their light draught of water, they made much less use of the Lights and Buoys than large ships. The duty of 1 Rupee for every 100 maunds of burthen was chargeable under the Regulation upon country vessels taking cargo from the Port, and was, he believed, in practice seldom levied, except on such of them as cleared out at the Custom House.

The Bill then provided that vessels entering the Port in ballast, should be charged with three-fourths of the Port-due which would otherwise be chargeable. This was on the principle that vessels in ballast should be charged at half rates. Ships very often came in from the Mauritius and other ports in ballast, but it never happened that they left without a cargo; and, therefore, the consolidated due for entering and leaving which such vessels would pay should be three fourths of the usual rate.

Section VI provided that, on Tug Steamers and River Steamers belonging to the Port, the Port-due chargeable under Section I should be charged only once each half-year. This was in accordance with a provision in the Schedule which had been originally inserted in the Ports Act, and was afterwards struck out. At present, neither description of steamers paid anything. The River Steamers made little use of the Buoys, and none at all of the Lights; but it was right that they should contribute to some extent towards the expenses of the Port, since they benefited, in common with other vessels, from its arrangements. The Tug Steamers probably made more use of the Lights and Buoys than any other class of vessels, but it was perhaps only when they passed up or down without a ship in tow that they could properly be called on to contribute to the expense of maintaining them; and he thought it would be sufficient to charge them, like the River Steamers, twice a year. It would be very unadvisable to make the charge so heavy as to afford a pretext for increasing their rates of towing.

Section VII contained a table of fees to be charged by the Harbor Master's Department, which he had received from the Marine Superintendent's Office. It made no difference with respect to the size of ships; because the trouble of

performing the services for which the fees were to be charged, was as great in the case of large, as in that of small vessels. He had mentioned before that some of the fees now taken were unnecessarily high; and this table shewed a considerable reduction of them.

The Bill was read a first time.

LAND REVENUE OF THE TOWN OF MADRAS.

MR. ELIOTT moved that the Council resolve itself into a Committee on the Bill "to amend Act XII of 1851 (for securing the Land Revenue of the Town of Madras,") and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

MR. PEACOCK said, he did not object going into Committee upon this Bill; but he must say for himself that he was not prepared to discuss it to-day. He was not aware, until Thursday evening, that the Honorable Member for Madras intended to bring it forward at this Meeting, and he had not since had time fully to consider the question involved in it. The Bill had stood over for a considerable time, and it might probably be said that that was partly owing to him. After the second reading, his Honorable friend went to Madras, and, on his return, handed to him a Paper drawn up by the Collector showing the amount of rent or revenue payable in respect of the tenures which would be affected by this Bill. About the middle of last week, the Honorable Member wrote asking for the return of the Paper, and he (Mr. Peacock) returned it, stating that he had not altered his opinion with respect to the Bill. He did not then know that the Honorable Member intended to move for a Committee of the whole Council on the Bill to-day; and, as he had said before, it was only on Thursday evening that he first became aware of his intention so to do. Unless, therefore, the Honorable Member was disposed to press his motion, he should be glad if the consideration of the Bill in Committee could be postponed.

If the Bill was to pass at all, several amendments would be required. Should his Honorable friend determine to proceed with it to-day, he should endeavor, as far as he could, to make the necessary amendments, without, however, pledging himself to vote for the third reading even if those amendments should be adopted.

There were three classes of cases embraced by the Bill. First, cases in which, between the years 1800 and 1828, the Government had granted to persons claiming to have purchased lands from the Meerasdars, leases which reserved a power of re-entry for non-payment of rent or revenue: secondly, cases in which, from the year 1828 to the present time, the Government had issued grants, or certificates in the nature of leases, but which did not reserve the right of re-entry or sale. The certificates were not precisely in the form of a lease, but they confirmed the grants made by the Meerasdars, the holders covenanting that a certain sum should be paid annually to the Government, and that, in case of default, the Government might levy the same by distress. They appeared to him, as at present advised, to amount substantially to contracts that the lessees should hold the lands subject to the right of distress. In 1851, an Act was passed giving the power of distress, but not of re-entry or sale. In 1850, an Act was passed for securing the land revenue of Calcutta. As originally framed, that Act contained a Section giving the same power of sale which this Bill proposed to give with respect to Madras. The Government, however, objected to give that power, under the advice of the Honorable and learned the Chief Justice, who was then Advocate General. Before discussing the provisions of this Bill, he should like to read the papers relating to the Calcutta Act in order to ascertain precisely the circumstances under which the Section had been rejected, but he had not had time to obtain them.

He thought, however, that, even if passed as it stood, this Bill would not effect the object for which it was designed. It appeared that, in some cases, owners of lands were not known; and that, in others, occupiers prevented distress by keeping their doors shut up. This Bill would not remove the present difficultits in cases of unoccupied land of which the owners were unknown, because it provided that it should be lawful to the Collector of Madras to sell land

only when the owner or occupier should have refused or neglected to pay the revenue assessed upon it, on a written demand. If a piece of land was unoccupied, and the owner unknown, how would a written demand for revenue be served upon him?

It also appeared to him, as far as he could judge at present, that the Bill went much farther than the necessity of the case required. It included *all* lands in Madras—as well those which were held under the form of lease which obtained from 1800 to 1828, as those which were held under the form introduced since that period, or under any lease whatever reserving a rent to the East India Company. For it said—

"If any owner of assessed land, or any person holding land subject to a rent payable to the East India Company within the limits of the Town of Madras, shall, upon the written demand of the Collector of Madras, refuse or neglect to pay any sum at which the land is assessed, or with which it is charged as rent, and if the said Collector shall not be able to levy the same by distress and sale of any goods and chattels of the owner or lessee, or of any goods and chattels found upon the land, under the provisions of Section VII of Act XII of 1851, it shall be lawful for the Collector to cause the land to be sold for the arrear of revenue or rent which has accrued due thereon."

According to this it appeared to him that not only persons holding lands under the form brought into use since 1828, but persons holding lands under any form of lease whatever, and all their under-tenants, should be liable to have their holdings sold for arrears of revenue or rent.

He did not think that this was a Bill which the Council ought to pass without full consideration. Certainly, it was not a Bill which the Council ought to pass in its present form. If it was pressed into Committee to-day, he should propose to insert certain amendments in it, imperfect as his opportunity had been for studying the subject, and determining the precise form of those amendments; but though he should take that course, he would still reserve to himself the right of resisting the motion for the third reading, if, upon mature consideration, he should consider it right to do so.

MR. ELIOTT said, he had not the least desire to press the consideration of the Bill in Committee to-day, if the Honorable and learned Member was not prepared.

THE CHIEF JUSTICE said, he also felt obliged to the Honorable Member for Madras for postponing his motion to go into Committee, for he had not had even the notice which his Honorable and learned friend opposite (Mr. Peacock) had had. It was only yesterday that he became aware of the intention to bring forward to-day this Bill, to which, on a former occasion, he had objected on various grounds.

MR. ELIOTT begged to observe that he thought the Honorable and learned Member opposite (Mr. Peacock) was aware that the object for which he had applied to him to return the Paper on the subject which he had communicated to him in the hope of removing his doubts, was that he might bring forward the Bill again to-day.

In explanation of the short notice to which the Honorable and learned Member had referred, he might mention that he had thought the discussion would turn upon the construction of only one Paper, namely, the form which had been brought into use since 1828.

The motion was, by leave, withdrawn.

SINGAPORE PORT-DUES.

MR. ALLEN moved that the Petition of Merchants, traders, and other inhabitants of Singapore against the levy of Port-dues in the Port of Singapore, which had been reported at the last Meeting, be printed.

Agreed to.

NOTICES OF MOTIONS.

MR. LEGEYT gave notice that, on Saturday next, he would move the first reading of a Bill to establish and incorporate an University at Bombay.

Also that he would, on the same day, move that the Council resolve itself into a Committee on the Bill "to make better provision for the collection of Land Customs on certain Foreign Frontiers of the Presidency of Bombay."

MR. ALLEN gave notice that, on Saturday next, he would move that the Council resolve itself into a Committee

on the Bill "for the acquisition of land for public purposes."

MR. ELIOTT gave notice that he would, on the same day, make the motion, which he had this day postponed, for a Committee of the whole Council on the Bill "to amend Act XII of 1851."

The Council adjourned.

Saturday, March 21, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice.	P. W. LeGeyt, Esq.
Hon. J. P. Grant.	E. Currie, Esq.
Hon. B. Peacock.	and
D. Fliott, Esq.	Hon. Sir A. W. Buller.
C. Allen, Esq.	

CRIMINAL PROCEDURE (BENGAL.)

THE CHIEF JUSTICE presented the Report of the Standing Orders Committee on the Petition of British Subjects in Bengal against the Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in Bengal, for simplifying the Procedure thereof, and for investing other Courts with criminal jurisdiction," and moved that it be printed. He also gave notice that, on Saturday next, he should move that the Report be adopted.

The Motion was agreed to.

BOMBAY UNIVERSITY.

MR. LEGEYT postponed his Motion (which stood in the Orders of the Day) for the first reading of a Bill "to establish and incorporate an University at Bombay."

POLICE AND CONSERVANCY (SUBURBS OF CALCUTTA, AND HOWRAH).

MR. CURRIE moved the first reading of a Bill "to make better provision for the order and good government of the Suburbs of Calcutta and of the station of Howrah."

In doing so, he said this was the same Bill which had been read a third time and passed by the Council on the 21st of last month. The reasons which had influenced the Governor-General in withholding his assent to it, had been communicated to the Council. They did not imply any disapproval of the provisions of the Bill. The Governor-General had withheld his assent, because, at the Meeting in which the Bill was recommitted previous to the third reading, a Clause was added which, in his Lordship's opinion, ought, in the spirit of the Standing Orders, to have occasioned its republication. It would not be becoming in him (Mr. Currie), after the expression of that opinion, to make any remarks upon the added Clause. It was sufficient to observe that all that was required was that the Bill should be published for general information in its altered form; and that requirement could be fully met by carrying it anew through the several stages.

The Bill was read a first time.

CALCUTTA PORT-DUES AND FEES.

MR. CURRIE moved the second reading of the Bill "for the levy of Port-dues and Fees in the Port of Calcutta."

The Motion was carried, and the Bill read a second time.

LAND REVENUE OF THE TOWN OF MADRAS.

The Order of the Day being read for a Committee of the whole Council on the Bill "to amend Act XII of 1851 (for securing the land Revenue of the Town of Madras")

MR. ELIOTT said, before moving the Council to go into Committee upon this Bill, he wished to say a few words in explanation of the objects and reasons for it, and with reference to the objections made to it as infringing the covenant under which some of the lands at Madras were held. He would first beg leave to remind the Council of the purpose of the Bill by reading a part of the Statement of objects and reasons annexed to it:—

"The object of this Bill is to supply a defect in the Act (XII of 1851) for securing the land revenue of Madras.

"That Act sets out with a declaration in the Preamble that it is expedient that the land

revenue of the town of Madras should be ascertained and collected in as summary a manner as in other parts of the Territories of the East India Company.

"In Section IX of the Act it is declared that the claim of the East India Company for revenue or rent has priority over all other claims upon the land.

"The ground-rents payable to the East India Company for lands in Madras are declared by Section XVI to be revenue within the meaning of the Act of Parliament 21 Geo. 3, c. 70, whereby they are exempted from the Civil Jurisdiction of the Supreme Court.

"But the land itself is not declared to be saleable for arrears of such revenue, as it is in other parts of the Territories, failing the recovery thereof by the process of distress and sale under the provisions of Section VII of the Act.

"From the want of a provision to this effect, it is stated that the Act (XII of 1851) intended for the purpose of securing the land revenue of Madras, does not effect that object;"—

and it was proposed by this Bill to amend the Act by making the land itself saleable for arrears as well within as without the town of Madras, and so to give full effect to the intention expressed in the Preamble to the Act.

He was aware, as he had mentioned in introducing the Bill, that Act XII of 1851 had been copied from Act XXIII of 1850 (for securing the land revenue of Calcutta,) and that a provision to make the land saleable for arrears had been advisedly omitted from the latter. But it was to be observed that an Act had then lately been passed for the survey of Calcutta (XV of 1847) which was expected to give great facilities to the Revenue Officers by distinctly defining every holding and registering the owners and occupants.

When this Bill was under preparation, a reference was made to the then Officiating Collector of Calcutta to ascertain what had been the effect of the survey in this respect; to which he answered that, from the holdings having been defined and identified, there was now no difficulty in tracing an owner and making a demand upon him.

The case was quite different at Madras. No survey had been made there; and, for the want of a correct register, great difficulty was found in getting at the real owners of land. This was explained and illustrated in a letter from the Collector of Madras which was among the printed papers annexed to the Bill, and an extract from which he begged to read:—

"The law, as at present understood, gives power to this department to distrain moveable property found on the land, or in possession of the owner or occupier wherever found. But this power is evaded in numberless instances by the parties keeping their doors shut, and at the same time no sufficient means are available for ascertaining who the owner or fairly liable party is. Lands and houses are perpetually changing hands, without any registry of the transfer being made in this office, and even without the knowledge of our officers. But the annual bills are not altered unless the registry is altered. The warrant of distress is made out against the party named in the bill, and thus it frequently happens that the warrant is served upon a party not named either in it or the Bill, and the only proof in many cases forthcoming is the assertion of the Conicopolies and Peons that he is the party liable. The suit lately filed in the Supreme Court against the Collector and others, affords an apt illustration of the working of the present law. A garden at Tondiarpett is registered in the name of Rungasawmy Naick, who appears to have been long defunct. But no transfer of the property has since been registered in this office. Part of the Quit-rent has, from time to time, been paid through the gardener, part by one P. Annasawmy Moodelly, while part remained unpaid. As only the goods and chattels found on the land could be distrained under the old law, Annasawmy Moodelly was secure against further demand. Under the new law, the Amildar obtained a warrant against Rungasawmy Naick, which was served upon Annasawmy Moodelly, who now disclaims all right to the land, and the suit was the consequence. Such was the appearance of the case to a mind conversant with English law and procedure, that, on a *primâ facie* view, the Company's Solicitor thought it 'a mass of irregularity, and most unjustifiable,' though he afterwards saw that it was a *bonâ fide* endeavor to apply the Act to the enforcement of the just claim of Government in the only way available."

He would ask leave to read also an extract from a letter which he had lately received from the present Collector of Madras to the same effect—

"In framing the Calcutta Act, he observed, it was supposed that, the demand being light, the property on the spot would always satisfy it. This is all very well for the garden houses and larger buildings in town; but our difficulty lies in collecting the rent on the smaller tenements. A man shuts his house and departs. The distraining Officer makes his way in, and finds nothing but bare walls. Again, in the little patches of cultivation, if my officers do not watch for the reaping of the crop, and detain it, (and this requires a larger establishment than I have,) how am I to collect the

rent after the crop is carried, and the owner points out a wretched hut and a few pots as all he has in the world?"

The last passage of this extract led him to advert to another important difference between Madras and Calcutta; namely, the greater extent of the limits of Madras, which comprehended an area of 26½ square miles, whereas the limits of Calcutta contained only 10¼ square miles. In consequence of the extension of the limits, the greater part of the area of Madras consisted of cultivated lands, the tax on which, as observed by Mr. Millet, was similar to the land-tax in other parts, whereas the area within the limits of Calcutta was entirely covered with buildings. The land revenue of Madras was more than three times larger than that of Calcutta, the former being Rs. 66,000, the latter about Rs. 20,000. It was owing to this difference of circumstances that a provision to make the land saleable was really necessary to secure the Revenue at Madras, while it could be dispensed with at Calcutta, for the present at least. He might observe, however, that the Collector of Calcutta, in answering the reference to which he had adverted, expressed some apprehension that, from the want of a compulsory provision for the Registry of transfers, a difficulty similar to that complained of at Madras might in future be experienced at Calcutta.

The lands of Madras for the most part were held under various deeds or instruments issued in the name of the East India Company. These deeds were called respectively Company's grants and Company's certificates, and were in several different forms. Until 1828, the documents called Company's grants were in the form of a lease for 99 years from the Company as proprietor; and the Advocate General said—

"It is quite clear that the Honorable Company, under that form, on regular demand of the Quit-rent due, had an indisputable right of re-entry, and that, after such re-entry, the ground might be sold for the Company."

In 1828, a new form was introduced, on the advice of the Advocate General of the day, the object of which was, not to assert an absolute right of property in the land on the part of Government, exclusive of every other interest, as was done in the lease, but to confirm possession already held under a good title, so far as the Company was concerned, in consideration of that title, and of a covenant by the party in possession to pay a certain sum yearly "in lieu, and as and for a commutation of the Circar's share of the produce" derivable from the ground specified, it being provided that in default of payment, the Officers of the Government might enter and distrain for the same. By those new forms, the payment to be made for the land was declared to be not landlord's rent, but revenue, or the dues of the Circar. In the form for lands acquired at first hand from the Meerassidars, the payment to be made was said to be "in lieu, and as and for a commutation of the Circar's share" hitherto payable by the Meerassidars.

Neither the forms of *certificate* in use before 1828, nor those which were then substituted for them and were now in use, had any provision touching the recovery of the Quit-rent. The old forms contained merely a certification by the Collector of the Quit-rent charged upon the land recognized by it as being in the possession of certain parties. The new forms contained, besides, an acknowledgment by the parties in possession that the land was subject to a certain rent, and that they were liable to pay the same. The number of lands and tenements held in 1852-53, under the old form, was 10,350; under the new form 11,650. These numbers, it was to be observed, comprehended the holdings under certificates as well as under grants. Besides the land held under grants and certificates, there were about 5,000 parcels of land held without such documents, as other lands of the same description were held beyond the limits. With respect, then, to much the larger portion of the lands in Madras—those held under the old forms of lease with power of re-entry, those held under certificates both in the old and new forms without any provision as to the mode of recovering the quit-rent, and those held without either grant or certificate—there would appear to be no bar in the nature of the tenure to their being declared by Law to be saleable for arrears of revenue. In fact, the lands held under the old form of grants were already saleable by the process of re-entry. The change

with respect to these would be to substitute a simple and summary process for a technical and tedious one.

The lands held without grants were in no way distinguishable in regard to tenure from lands outside of Madras liable to sale.

The *certificates*, so called, which simply specified the rent or revenue payable, presented no such bar.

But the Honorable and learned Chief Justice and the Honorable and learned Member opposite (Mr. Peacock) had objected to lands held under grants in the new form introduced in 1828 being made saleable for arrears of revenue. To use the words of the Honorable and learned Chief Justice, "every man who held land under such a document, held it under a contract which did not import the liability now sought to be imposed upon him."

But, with great deference, he would submit that, although the instrument did not in express terms import such liability, neither did it expressly exclude it; while terms were used from which it seemed to be inferrible that it had not been meant to exclude that liability absolutely, but rather to reserve it for the last resort according to the common law of India, which made the land the ultimate security for the revenue, the process of distraint being, however, indicated as that to be used primarily in all cases. Certainly, the terms "in lieu of, and as and for a commutation of the Circar's share of the annual produce hitherto payable to the Government, by the Meerassidars" were intended to have a special significancy; and what other but to remind the holders of the land that, the rent payable by them being Government revenue, when it could not be recovered by the process of distraint, the other means by which the Government revenue was recoverable from the Meerassidars would still be available. This was the construction of the Instrument which was maintained at Madras, and it would appear that the Advocate General had concurred in it when he gave his opinion that there was no legal obstacle to the passing of an Act of this description. This opinion, it was to be observed, had been given by him after he had particularly examined the terms and conditions of the several documents, and made them the subject of critical comment. It was for the Council to judge whether this was a fair interpretation.

The Honorable and learned Member opposite (Mr. Peacock) had made another objection to the Bill—that it did not sufficiently protect under-tenants. Putting the case of a lessee holding under a grant in the form in use since 1828 having erected a house on a part of the land, and having sold the house, he said he thought it would be a great injustice to a person who had purchased on the faith of the grant if Government were to come in and sell the house as well as the remainder of the land for an arrear of revenue due by the Lessee. The new Section introduced by the Select Committee, by which an under-tenant might pay the arrears of revenue and deduct the amount from the next payment of rent, he thought, would not be a sufficient protection, for the arrears of revenue due from the original lessee might amount to a considerable sum, while the rent under which the sub-lessee held his house might be a mere pepper-corn. He had communicated with the Collector of Madras on this point, and had obtained from him a statement shewing that of 11,643 parcels of land held under the new forms, no less than 11,413 were held subject to quit-rents varying from 1 to 10 Rs. per annum; and that of the remainder, there were only 39 holdings assessed at 40 Rs. and upwards, of which only 1 was assessed at a sum exceeding 160 Rs. per annum.

Considering the lowness of these rates, it would probably be thought that there was no reason to fear that under-tenants would be liable to suffer injury in the manner supposed by the Honorable and learned Member, by the land being made saleable for an arrear due by the original holder—indeed, the tenements were so small that they could scarcely be subdivided. At any rate, the under-tenants would be able to protect themselves under the new Section introduced by the Select Committee. In fact, however, it was not the practice at Madras to *underlet* portions of original lots for building or other purposes. When such lots were parcelled out for such purposes, it was usual to sell the several parcels separately, and the purchaser took out a new document in which the proportion

of the whole assessment chargeable upon the parcel purchased, was specified, and he was responsible for nothing but the quota on his own land. The statement furnished to him by the Collector of Madras, he had communicated to the Honorable and learned Member; and he believed he was satisfied on this point.

The Chief Justice had suggested that even where the process of distraint failed to realize the whole amount of revenue due, the case was not without a remedy; for the Government might sue for the balance in the Chingleput Court on the covenant to pay, and might proceed upon judgment to a sale of the land. But when it was considered how vast was the proportion of small holdings paying from 1 to 10 Rs. (11,413 out of 11,643) and that, as stated by the Collector in the extract he had read, it was with respect to such small holdings, and not the valuable garden-houses and the large pucka buildings in the town, that there was any difficulty, it would, he thought, be perceived that this remedy would not be a practical one.

With these remarks he begged to move that the Council resolve itself into a Committee upon the Bill; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended that it should be passed.

MR. PEACOCK said, before the Motion was put, he desired to make a few observations regarding the Bill.

He was very glad that the Honorable Member in charge of the Bill had consented, at the last Meeting, to postpone going into Committee upon it until this day; because, in the interim, he had had an opportunity of fully considering the subject; and he felt bound to admit, in candor, that he did not now feel so strong an objection to the Bill as he had felt before. But still, he thought that no sufficient case had been made out for the passing of such a Bill. By the 1st Section it was provided that—

"If any owner of assessed land, or any person holding land subject to a rent payable to the East India Company within the limits of the Town of Madras, shall, upon the written demand of the Collector of Madras, refuse or neglect to pay any sum at which the land is assessed, or with which it is charged as rent; and if the said Collector shall not be able to levy the same by distress and sale of any goods and chattels of the owner or lessee, or of any goods and chattels found upon the land, under the provisions of Section VII of Act XII of 1851, it shall be lawful for the Collector to cause the land to be sold for the arrear of revenue or rent which has accrued due thereon."

There was no exception made as to any lease whatever. Whenever any person held land subject to a rent payable to the East India Company, if the rent was not paid, and the amount could not be levied by distress, the land, however much it might have been improved by building or otherwise, might be sold. The Honorable Member had said that a great many of the tenements held at Madras were subject to very small rents. But if there had been a contract between the East India Company and third persons, that contract ought to be carried out. A contract was a contract, whether it was for a large sum or for a small sum; whether it was with a rich man or with a poor man; and, once entered into, however unadvisedly, it ought to be strictly observed. The Honorable Member had favored him with a copy of the various documents under which land was held at Madras. Some of them were merely certificates given by the Choultry Courts stating that two witnesses had examined into A. B.'s claim, and found him in possession of the land, stating the boundaries, subject to a quit-rent payable to the East India Company.

Then, there was another form of document, which had been given at one time by the Board of Revenue, and at another by the Collector of Customs. That form contained a declaration of two witnesses who said that they knew A. B. to be in possession of a certain piece of land with certain boundaries held at a certain quit-rent, and that they believed him to be the owner; and, upon the statement of A. B. that he believed himself to be the owner, the Board of Revenue, or the Collector of Customs, as the case might be, certified that the statement appeared to be correct.

As to the manner in which the system of quit-rent had originated, the certificates gave no information, and the Council was quite in the dark. Whether the quit-rent was revenue payable in respect of the land, or

whether it was a quit-rent originally reserved by the Zemindar, and to which the East India Company had become entitled as having succeeded to the Zemindary, there was nothing before the Council to shew. Probably, the latter was the case.

It appeared from a very elaborate Minute written by the late Mr. Millet, that the East India Company in Calcutta represented not only the Circar, but the Zemindar. They, therefore, had the same right as the Zemindar had, whatever it was: but that did not prove that they were entitled to sell the land if the rent were not paid, as in the case of the non-payment of revenue.

Then, there were building-leases, in which lands were leased for a term of 99 years at a very small rent, if demanded. In the lease which he had seen, he believed the rent reserved was only one *fanam*, or the 12th part of a Rupee per annum.

MR. ELIOTT observed that the lands upon which only one *fanam* was assessed, might be very small.

MR. PEACOCK replied that the covenant expressed in the contract was that the lessee should build a house on the land, and keep it in repair; and that if he failed to do so or to pay the rent, the East India Company might re-enter and take possession. If he fulfilled the conditions of his lease, the East India Company covenanted to renew the lease after the expiration of the 99 years, on payment of a certain fine. However small, therefore, the rent assessed might be, there could be no doubt that the intention was that a substantial house should be built on the land. If a valuable house were built upon the land, he saw no reason why the Legislature should alter the Law on the subject so as to enable the Government to sell it off-hand for this one *fanam*, if the sum could not be realised by distraint. Would it be right to sell a substantial house for the purpose of levying a mere nominal rent? The Government could exercise whatever legal rights the lease gave them. But there was no necessity for giving them more stringent powers. Many accidents might prevent the payment of the rent. The owner might be absent in England, for instance; and yet, under this Bill, the Government might sell the house if the rent were not paid, leaving the owner without any equitable relief or other remedy whatever! He (Mr. Peacock) did think that, with respect to this class of cases, it would be unjust to alter the terms of the contract.

He now came to the form of documents introduced since 1828, and in use to the present day. Those documents, like all the documents in use prior to 1828, except building leases, reserved no power of re-entry. It was possible that substantial houses had been erected upon lands held under these documents; but unless some contract existed which gave the power of re-entry and sale in these cases when the quit-rent was not paid, he thought that the remedy ought to be left to the ordinary course of Law. In 1828, the Advocate General of Madras advised the Government that the form of document then in use was objectionable, and suggested another in which the Government reserved to itself only a quit-rent, and confirmed what were supposed to be grants from Meerassidars, or from intermediate holders, in consideration of a covenant on the part of the lessee that, in default of payment of the quit-rent, the Government should have power to distrain. That form had been adopted; and its effect was, not only that it reserved no power of re-entry and sale, but that it expressly contracted that arrears should be recoverable by the process of distraint. To give the power of sale now, would be to give a greater power than was reserved by the contract on the faith of which the lessee held his tenure, and had probably laid out money in building. By the building leases prior to 1828, if the revenue was not paid, the Government had power to re-enter, and, upon re-entry, to exercise the right of sale. Fully cognizant of this right, the Government abandoned it advisedly in 1828, and introduced a form of Instrument in which it substituted, in express terms, the right of distraint only.

Then, Act XII of 1851 was passed, and by that it was provided that

"if any owner of assessed land, or any person holding land subject to a rent payable to the East India Company, shall, upon the written demand of the Collector, refuse or

neglect to pay any sum at which the land is assessed, or with which it is charged as rent, the Collector may levy the same by distress and sale of the goods and chattels, wherever found, of such owner or lessee; or, after written demand upon the tenant or occupier, and on his refusal or neglect to pay the sum lawfully demanded, by distress and sale of any goods and chattels found upon the land, in the manner appointed for regulating distresses for small rents in Calcutta by Act VII of 1847, extended to Madras by Section LXXXIX Act IX of 1850; and for the purpose of any such distress and sale, the Collector shall have all the powers of a Judge of the Court of Small Causes under Section LXXXIX Act IX of 1850 aforesaid."

It appeared to him, therefore, that, although there might be some little difficulty in collecting the rents in a few of these cases—that although, where land was waste and unoccupied, some of these quit-rents might not be realizable —it was better that the Government should bear with that evil than that the Legislature should add to existing contracts terms which would impose upon holders of tenures a liability which those contracts did not import. The Government of India, under the advice of the Honorable and learned Chief Justice, who was then Advocate General, refused to insert in Act XXIII of 1850, for securing the land Revenue of Calcutta, a clause similar to that which was now proposed to be enacted for Madras. The Honorable Mover of this Bill had said that there was a distinction between Madras and Calcutta; because, previously to the passing of Act XXIII of 1850, an Act had been passed for the survey of Calcutta, the operation of which enabled the officers of Government to trace the owners; whereas there was no such Act for the survey of Madras. But he saw no reason why, if there was a necessity for it, Madras should not be placed on the same footing in this respect as Calcutta, by passing a similar Act for Madras. Though this had not been done as yet, there was no reason why it should not be done.

Then, the Honorable Member said that the limits of Madras were much larger than those of Calcutta. But still, the Government knew what the dimensions of Madras were when it entered into the contracts of which the form was introduced in 1828. It was not as if it had inadvertently extended the limits of Madras after the introduction of the new form of contract, and so excluded itself from the right of recovering rent by means of re-entry and sale in respect of tenures which were previously subject to that right.

Under these circumstances, it appeared to him that it was better that there should be a little difficulty in recovering some small amount of quit-rents or revenue, than that the Legislature should alter the conditions of a contract which the Government had advisedly entered into. There could be no objection to reserve a right of re-entry or sale in all *future* leases. Every person who should take land under a lease reserving that power, would do so with his eyes open, and would have no reason to complain if the right should be enforced. But where persons had purchased tenures on the faith of a contract which gave no power of re-entry or sale, but only a power of distress, it would be great injustice to them and to their under-tenants to add to the contract terms which would diminish the value of their property. The question was, not what the amount of the rent assessed on the land was, but what was the amount of capital laid out on the land, and the value of the property erected upon it. In 1850, when the Act for Calcutta was under consideration, the Advocate General of the day (Sir James Colvile) said—

"The summary power of sale given to the Collector by the 12th Section of the Draft Act, as it now stands, seems to me to be novel as regards Calcutta, and one which (though its operation is limited to the right, title, and interest of the defaulter, and therefore far less extensive than the power of sale exercised by the Revenue Authorities in the Mofussil) is likely to give rise to considerable apprehension of uncertainty, if not to create actual uncertainty in titles to land, and consequently to depreciate that kind of property. It may also lead to questions of priority between them and ordinary execution sales by the Sheriff.

"It seems to me that it would be more consistent with the spirit of British Law, by which Calcutta is governed, to confine the remedies for the recovery of arrears of a rent charge (that is to say) to distress and an action of debt."

The Government of the day had acted upon this opinion, and refused to insert in the Act a clause giving the right of re-entry and sale. That power having been refused with respect to lands in Calcutta, there was no good

reason for granting it at Madras, but there were strong reasons against it.

MR. ELIOTT said, if the sum payable under the form introduced in 1828 were landlord's rent, the remedy of the Government would have been by the ordinary Law. But the Advocate General at Madras had described it as rent payable in lieu, and as and for a commutation of the Government revenue, and he (Mr. Eliott) did think that the provision as to distraint was intended merely to point out the process to be primarily adopted, and did not take away from the Government the ultimate process of re-entry and sale in failure of recovery by distraint.

THE CHIEF JUSTICE said, he did not think it necessary to assign any grounds of objection to this measure in addition to those which had already been so well stated by the Honorable and learned Member opposite (Mr. Peacock.) But as the Honorable Member who had the conduct of the Bill had adverted to certain objections which he (the Chief Justice) had made to the Bill on a former occasion, and had attempted to answer them, he felt bound to say that the Honorable Member's reasoning, however satisfactory it might appear to other Members of the Council, had not removed those objections from his mind. The substance of the Honorable Member's answer had been repeated by him in the explanation which he had just offered. He (the Chief Justice) understood the Honorable Member to contend that, in the construction of the contract in question, the right of re-entry and of sale must be taken to be implied. The objection which he (the Chief Justice) had taken to the Bill was that, in giving the Government the right of re-entry and of summary sale, it was altering a contract advisedly made with present holders of land under the forms A. and B. printed amongst the annexures. The Honorable Member said that this would not be the effect of the Bill, because the sum payable to the East India Company under those forms was payable in lieu, and as and for a commutation of the Circar's share of the produce; and that such a description of the sum payable implied the reservation of all powers for the recovery of it which the Government under the general law had in respect of any revenue assessed upon land. It seemed to him (the Chief Justice) that, if that were the case, there would be, so far as tenures under the Instruments A. and B. were concerned, no necessity for this Bill at all. But he confessed that, in the absence of any decision by a competent Court to the effect contended for by the Honorable Member, he should be slow to accept that construction. He was willing to accept the decision of any competent Court. He was willing to accept the decision of the Chingleput Court. But it certainly appeared to him that the view which the Honorable Member took of the contract was not the view which the Law Officers of the Madras Government took of it; for in one of the papers before the Council, the Advocate General treated those forms as defective, because they did not give the powers of re-entry and of sale. For himself, he repeated that, finding the sum payable to be not revenue assessed under the general Law, but a sum fixed by contract by way of commutation of the former rights of the Government to share in the produce of the land; and, further, that the same contract expressly reserved certain powers for the recovery of that sum—he thought that it required a very forced construction of the contract to import into it general Revenue Law remedies other than those which the Government had expressly reserved. The Government had expressly reserved the right of distraint, but it had not reserved the right of re-entry and of sale, and he thought the latter could not be implied. The Honorable and learned Member opposite (Mr. Peacock) had spoken of the right of Government as a right rather to proprietor's rent than to revenue arising out of the land. He (the Chief Justice) had argued the question on the other supposition, as being most favorable to the views which the Honorable Member for Madras held regarding the principle of his Bill; and he dared say that the sums which the Government received as payable to the Circar, were more in the nature of general land revenue, than of zemindary rent. But taking the right even as higher than a mere zemindary right granted by the former Sovereigns of the country, he continued to think that the power of sale on default in payment of the sum

payable to Government, was neither expressed nor implied by the contract; and that the Legislature ought not to alter or qualify existing contracts by giving the Government such a power.

MR. ALLEN said, the question on which he wished to speak was whether this Bill was, in fact, a breach of contract or not. It was utterly repugnant to his feelings to support any measure that appeared to him to amount to a breach of contract; and if he had thought that the Bill amounted to that, he would readily have voted against going into Committee. Very few things could justify the Legislature in altering the terms of a contract. But could this Bill be fairly said to be such an alteration? Land had been given by Government in Madras, under a covenant that the lessee should pay a certain rent for it. This Bill did nothing more than alter the mode of realizing that rent. Even the argument that it was a breach of contract to render the land liable to sale for arrears, when the lease gave only the power of distraint, was futile as regarded this Bill; for the Legislature had already altered that term (if it was a term) by Act XII of 1851. Section IX of that Act said—

"The claim of the East India Company for land revenue or rent has priority over all other claims upon the land, or to which property distrained upon the land may be liable."

Consequently, if land held in Madras could not formerly, under the Deeds, be sold for rent due, this Section gave the right of sale. If it was admitted that the land was saleable in any way for arrears of the Government demand, an Act which declared that, instead of resorting in the first instance to the Zillah Court, gaining a decree there, and then selling under the decree, the Government should have the power of selling on the occurrence of the arrear without going to the Court, would alter, not the substantial rights of the Government, or the terms of the contract, but merely the procedure by which those rights should be enforced. Where, for instance, the Legislature made a new offence penal, no one could be tried for committing it before the Act was passed. But suppose an Act was passed declaring that a certain offence should be tried summarily by a Magistrate instead of by a Judge with a Jury. After the passing of such an Act, a person might be tried summarily for an offence committed before the passing of the Act, and such a person would have no right to claim a trial by Jury on the ground that, at the time the offence for which he was about to be tried was committed, the Law gave no power of summary trial for that offence. A mere change of procedure comes into effect at once without injustice, and he looked upon this Bill as not altering the terms of any contract, but merely as altering the *modus operandi* for enforcing the due performance of the terms of the contract.

MR. CURRIE said, he felt very reluctant to address the Council after the observations which had fallen from the Honorable and learned Member on his right (Mr. Peacock) and the Honorable and learned Chief Justice. But as he intended to vote contrary to their opinion, he felt it incumbent upon him to state the reasons which would influence him in doing so.

The object of the Bill was to extend to a Presidency Town the provisions of a Mofussil Law—that which related to the realization of the land revenue. It seemed to him that, upon general principle, this could hardly be objected to. The Law under which the Madras and Calcutta ground-rents were now collected, avowed the principle in the Preamble of the Act, but did not give effect to it in the enacting clauses. The reason of this was that Mr. Millet, who had prepared the Calcutta Act, was of opinion that, in giving the power of distraint over all property which might be found on the land, sufficient provision was made for the protection of the public revenue. But he (Mr. Currie) observed that, when the subject, as it related to Calcutta, was before the Government, Mr. Cameron had proposed to go much farther. Mr. Cameron had proposed that, for revenue purposes, the Calcutta lands should be annexed to the Zillah of 24-Pergunnahs; and that the whole of the Mofussil Revenue Law should have operation over lands within the Town of Calcutta.

If, then, there was no objection upon principle to the extension of the Mofussil Law to a Presidency Town, it did not appear to him that there was any

The Chief Justice

thing in the circumstances of Madras which presented a bar to the measure.

He spoke with great diffidence, and should have been glad if, after the speeches of the Honorable and learned Members who had preceded him, he could have reconciled it to himself to say nothing on the subject.

The documents principally insisted upon by the objectors to the measure were those of which the form was introduced in 1828. He agreed with the Honorable Member on his right (Mr. Allen) that those documents could scarcely be considered in the light of contracts. What was their purport, and how did they affect the position of the holders? If what he had said with regard to the general principle were admitted, there could be no objection to making lands liable to sale for arrears of public revenue while they remained in possession of the Meerassidars. Then in what respect did the position of purchasers from the Meerassidars differ from that of the Meerassidars? The document granted to the purchaser, as it seemed to him, merely acknowledged the title derived by the purchase; it recognized the purchaser as personally liable for the payment of the revenue in lieu of the Meerassidar, provided that that personal liability might be enforced by distraint. But this did not affect the inherent conditions of the landed tenure. It did not annul the indefeasible right of the Government to hold the land itself liable for the public revenue assessed upon it. In a case which had arisen in Calcutta, and which had been appealed to England, the Privy Council had held that the Collector's Pottah was not a muniment of title, but only an evidence of holding; and it seemed to him that that was precisely the nature of the documents in question. They were an evidence of holding, and nothing more.

The sale of land for arrears of the revenue assessed upon it was not only the most effectual, but the most advisable mode of recovery. The only case in which objection could be taken to that procedure was that of land upon which substantial buildings had been erected by persons not the owners of the land. But by the provisions of this Bill, there must first be a distraint upon the property of the owner, and upon property found on the land; and it was only in the event of the Collector failing to realize the arrears by these means, that he could proceed to a sale of the land. Considering the very insignificant amount payable as revenue, it was extremely improbable—almost impossible—that the ultimate resource of putting up the land for sale should ever be resorted to in any such case. Besides this, tenants so circumstanced would have a further protection in the provision in the Bill which allowed them to pay the arrears of revenue, and deduct the amount from the next payment of their rent.

MR. GRANT said, after the strong objections which had been urged against this Bill by such high legal authority, he regretted that the Honorable Member for Madras thought it his duty to press it forward. The whole object of the Bill was, after all, a most trumpery one. The whole revenue or ground-rent at Madras was only about Rs. 60,000, and it was proposed, for the sake of a slight extra facility in the collection of this sum, to do that which the highest legal authorities considered equivalent to a breach of contract. He had understood the Honorable Member for the North Western Provinces to admit that a contract does exist in this case. The Honorable Member for Bengal seemed to think that the Honorable Member for the North Western Provinces had not made that admission. He (Mr. Grant) understood him to have made it. He understood him to have said that, although there is a contract, this Bill would not interfere with that contract, because it would alter, not the substantial rights of the parties. but merely the procedure for the enforcement of those rights. He could not agree with the Honorable Member in that view. At present, a man holds a valuable house at a quit-rent under a contract, and under that contract, if he fails, owing to absence or any other cause, to pay the quit rent, which appears in some cases to amount to one *fanam*, equivalent to twopence, he may be sued. The Court in which he is sued will not give judgment, until he has had notice of action, and until he has had ample opportunity of coming forward and shewing cause, if he has any cause to show, why he should not pay, or of paying the claim, and so saving his house. But by this Bill, no notice

would be given, no time would be allowed. The house might be sold over his head, immediately upon default of payment, and without his knowledge. He (Mr. Grant) could not agree that this was not an essential and substantial change in the conditions of the contract. In the one case, the owner's tenure was secure: in the other, no man alive could call it a secure tenure.

For this reason, he should vote against the motion for going into Committee upon the Bill, understanding that, if this motion were defeated, the effect would be to throw out the Bill, which it was his object to do.

MR. ELIOTT'S Motion being put to the vote, the Council divided:—

AYES—4.	NOES—5.
Mr. Currie.	Sir Arthur Buller.
Mr. LeGeyt.	Mr. Peacock.
Mr. Allen.	Mr. Grant.
Mr. Eliott.	The Chief Justice.
	The Vice-President.

So the Motion was negatived.

BOMBAY LAND CUSTOMS.

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "to make better provision for the collection of Land Customs on certain Foreign Frontiers of the Presidency of Bombay." In making this Motion, he thought it right to say a few words with regard to the Bill. The Council would remember that, on the 3rd of January, the Select Committee had reported that they did not think the measure should be proceeded with. He had charge of the Bill, but he had not followed the usual course with respect to the Report of the Select Committee in moving for its adoption, because he had desired to make a further reference to the Government of Bombay. That reference he had made, and the answer of the Bombay Government was before the Council in Paper No. 2, in the shape of a Resolution by the Governor in Council dated the 18th of February, and in which the reasons were set forth why they differed from the Select Committee. He did not think that he would be acting as he felt he ought to do by the Bombay Government, if he allowed the matter to drop through; and it appeared to him that the best course open to him was the one which he now proposed to take—namely, to move for a Committee of the whole Council on the Bill, upon which Motion the Council might determine either to proceed with it, or so otherwise to deal with it as it might consider best.

MR. CURRIE said, he should be very reluctant to throw any obstacle in the way of a measure which had been declared to be necessary by the Government of any Presidency; but he should feel great difficulty in voting for going into Committee upon this Bill. The Bill had not been sent up from Bombay, but had been prepared here; and he might, he believed, venture to say it had been prepared without any very accurate knowledge of the system under which inland customs were collected in Bombay. When the Bill came before the Select Committee, that body was equally without such information and had endeavoured to gather it, as it best could, from the only source open to it, the existing Law. The result of this investigation was stated in the Committee's Report. They said—

"With regard to 'the determination of the value of goods,' 'the under-valuation of goods,' and 'the misdescription of goods in application for passing'—as we understand the law, (and we suppose the practice to be in accordance with it,)—duty is not ordinarily received at the stations where the goods are passed across the Frontier, but at the Sea Custom Houses (Section IV Act II) and probably at some other places where there is a public treasury. The goods are not brought to the office of the receiver, he grants a certificate according to the specification given by the owner, and his business is merely to see that the proper amount of duty is paid according to the specification. The check is at the Frontier station, where the goods are examined and compared with the certificate; and to such a system, the provisions of the Sea Customs Law for the valuation of goods, the taking over of goods when under-valued, on account of Government, and the imposition of penalties for misdescription in the application, are clearly inapplicable. Such provisions would make it necessary that the goods should always be brought to the place where the duty is paid; and this (unless duty were taken at the Frontier) would, we apprehend, be a serious hindrance to Trade."

It appeared to him that anybody carefully considering Act II of 1852 would come to the conclusion to which the Select Committee had come. But it seemed that the conclusion was an

erroneous one. The Bombay Government said:

"The Special Committee quite misapprehend the ordinary practice at the Frontier Nakas as regards the levy of Customs duties. Duty on all imported goods is received at the station when the goods pass the Frontier. Exported goods also pay at the Frontier station unless in the rare exceptional cases in which they may have been previously subjected to an import Sea Customs duty at a British port. Rules are therefore required for the determination of value and prevention of the misdescription of goods at Frontier stations."

If the fact was as stated here, and he had no doubt that it was, then the existing Law was entirely unsuitable to the practice, and some alteration in it must be admitted to be desirable. But the Bill now proposed was also unsuitable; for, like the existing Law, it provided, by Section XII, for the grant of Certificates of payment of Customs, which were to be used in places other than those in which they were granted; and by Section XX such Certificates might be made use of at any time within thirty days, or even within a longer period if the holder procured a renewal of the Certificate. It was evident that such provisions as these were quite inapplicable to the state of things described in the communication from the Bombay Government. Nor did the Bill appear to be consistent with itself. For Section XII went on to provide that—

"If, upon examination, the goods brought to any such station be found not to correspond with the specification entered in the certificate presented with the same, the difference shall be noted on the face of the certificate, and, if the payment of duty certified therein shall not cover the entire amount of duty leviable on the goods, as ascertained at such examination, the goods shall be detained until further certificate for the difference shall be produced;".

whereas Section XIV provided that goods should be liable to confiscation if they were found not to correspond with the description given of them in the application for Certificate. It was at least as great an offence to attempt to pass goods across the Frontier under a Certificate not applicable to them, as to make an application for a Certificate in which the goods to which it related were misdescribed.

For these, and other reasons with which he thought it unnecessary to trouble the Council, it appeared to him that the Bill could not well be considered by a Committee of the Council in its present form, but that the proper course would be to refer it back to the Select Committee, who would endeavour to obtain from Bombay fuller information regarding the practice for which it was intended to provide, and amend it accordingly.

The Bombay Government said—

"It should be pointed out to Mr. LeGeyt, with reference to the Report of the Select Committee, that they have much under-estimated the value of the Revenue for the protection of which more stringent provisions are desired. This Revenue, estimated by the Committee at Rupees (30,000) thirty thousand per annum, amounts, in reality, to nearly four times that amount. The error seems to have been caused by the exclusion of the duties on imported salt from the account."

That was just the case. The Select Committee had advisedly excluded the duties on salt: the declared object of the Bill was the prevention or punishment of the under-valuation on misdescription of goods; and provisions for that object were altogether inapplicable to salt, which paid a certain specific duty according to weight. It did not appear from the papers annexed to the Bill how this salt-duty was levied. In one of the annexures it was spoken of as salt-excise. If that was a correct phrase, the excise would be paid, not on the Frontier at all, but when the salt was cleared out from the Salt Work under a Certificate. That, however, and other particulars might be ascertained from the Government of Bombay by the Select Committee, if the Bill were referred back to them.

He begged to conclude by moving as an amendment that the Bill be referred back to the Select Committee for reconsideration.

MR. LEGEYT said, he had no objection whatever to the course suggested by the Honorable Member.

He would only observe, on what his Honorable friend had stated in reference to the framing of the Bill, that it was very true he had framed it himself; but he had framed it from papers which he had received from Bombay, and the opinion of the Bombay Government regarding it was before the Council in one of the annexures. In it the Government said that, having submitted the measure to the officiating Revenue Commissioner, and having attentively

considered its several provisions, it was of opinion that it fully met the objects in view, and supplied the deficiency of Act II of 1852.

MR. PEACOCK said, he should have been glad if the Honorable Member who had the conduct of this Bill, had stated the grounds on which he considered it necessary that the Bill should be submitted to a Committee of the whole Council. The Select Committee had said in their Report—

"We have given careful attention to the provisions of this Bill, and to the circumstances under which it has been brought forward; and the conclusion to which we have come is that such a measure is not necessary."

The Report of the Select Committee concluded by saying—

"The Bill, if proceeded with, will require considerable alterations in arrangement and other details; but, for the reasons above stated, we think any legislation on the subject unnecessary."

The Honorable Member for Bombay, as a Member of the Select Committee, having told the Council that the Bill was not necessary, had to-day, without giving any reasons for changing his opinion, moved that the Council should go into Committee upon it, and this, notwithstanding the Select Committee, upon the ground that legislation was not required, had not thought it necessary to make the alterations which would be necessary if the Bill were proceeded with. The Bombay Government, since the publication of the Select Committee's Report, had stated—

"That the annual revenue for the better protection of which the Bill was desired, and which the Select Committee estimated at Rs. 30,000, amounted, in reality, to nearly four times that amount."

This he considered to be no reason at all for proceeding with the Bill.

It was very objectionable that the time of the Council or of Select Committees should be occupied in settling Bills which were unnecessary; and he thought that those Members of the Select Committee on this Bill who now proposed that the Bill should be discussed in a Committee of the whole Council, or re-considered by the Select Committee, should satisfy the Council that there were sufficient reasons for proceeding with the Bill. At present, he had not heard any thing which satisfied him that the measure was necessary now if it were not necessary when the Select Committee made their Report.

MR. CURRIE said, he was unfortunate in not having made his meaning clear to the Honorable and learned Member. The Select Committee had reported upon the Bill on the assumption that the practice was in accordance with the existing Law, and, on that assumption, had said that the existing Law was sufficient, and that no further legislation was necessary. The Government of Bombay had explained that the Select Committee were in error in their assumption, and that the practice was altogether different. In the remarks which he had just made, he had endeavoured to point out that the practice being such as the Bombay Government described it, the existing Law was altogether inapplicable to it, and that therefore an alteration in that Law was desirable. The amount of land customs on foreign frontiers in Bombay was small; but if it was to be collected at all, the Law under which it was to be collected should be suitable to the actual circumstances.

For the reason stated by the Bombay Government, which was not before the Select Committee when they made their Report, he thought it desirable that the Bill should be referred back to them for re-consideration.

MR. PEACOCK said, he did not quite understand the Honorable Member's position even now. The Government of Bombay had said:—

"The Special Committee quite misapprehend the ordinary practice at the Frontier Nakas as regards the levy of Customs duties. Duty on all imported goods is received at the station when the goods pass the Frontier. Exported goods also pay at the Frontier station unless in the rare exceptional cases in which they may have been previously subjected to an import sea customs duty at a British port. Rules are therefore required for the determination of value and prevention of the misdescription of goods at Frontier stations."

The Select Committee, in their Report, said—

"We remark that Section III of Act II of 1852 authorizes the establishment of Customs Stations, and gives the necessary powers to the Station Officers; and Sections IV and V provide for the appointment of Officers to receive payment of Customs Duties, and grant

certificates. We do not perceive what more is necessary. We are of opinion, however, that the general provisions of Act I of 1852, where the operation of those provisions is not expressly or by necessary inference restricted to the collection of Sea Customs Duties, which is the more peculiar subject of the Act, are applicable to Customs generally; and thus we think that a Commissioner of Customs appointed under Section III of Act I might, if the Governor-in-Council should so direct, exercise a control over the Officers appointed under Act II."

If that were so, this Bill was not necessary, and there was no reason why the Council or the Select Committee should be detained upon it. If, however, there were any reason for thinking that the Bill was necessary, he should not object to its being referred back to the Select Committee for report.

MR. CURRIE said, the passage which the Honorable Member had quoted applied solely and exclusively to the appointment of Land Customs Officers. The point upon which the Select Committee had, it appeared, come to a mistaken conclusion, and upon which he thought further enquiry necessary, was, as he had stated, the mode in which the duty was collected. Act II of 1852 distinctly provided that the duty should be paid to an officer of Sea Customs, or an officer specially appointed to receive Customs duties, and that he should give a certificate of the payment. Under that certificate, the goods mentioned in it would be taken to the Frontier, and would there be compared with the description in the certificate. The Bombay Government stated that, in practice, duty is received at the station when the goods pass the frontier. The Law and the practice were therefore at variance, and either the practice should be altered so as to make it conform to the Law, or the Law should be accommodated to what might have been found to be necessary in practice.

THE CHIEF JUSTICE said, he understood the Honorable Member for Bombay did not wish to press the Motion that the Council should go into Committee on his Bill. The only question, therefore, now was, whether the Council should adopt the proposition of the Honorable Member for Bengal, or should throw the Bill out altogether. He did not presume to say that the reasons assigned for a change of opinion on the part of the Members of the Select Committee were satisfactory or unsatisfactory. He had not studied the subject, and was unable to form an opinion either way. But as the Honorable Member for Bengal clearly thought a new state of circumstances existed, and desired to have an opportunity of reconsidering his former conclusion, he (the Chief Justice) thought it would be far better to refer the Bill back to the Select Committee than to reject a measure which the Government of Bombay considered necessary, and which the Select Committee, as now advised, was no longer prepared to treat as unnecessary.

MR. LEGEYT'S Motion was, by leave, withdrawn.

MR. CURRIE moved that the Bill be referred to a Select Committee consisting of Mr. Eliott, Mr. LeGeyt, and Mr. Currie.

Agreed to.

LANDS FOR PUBLIC PURPOSES.

MR. ALLEN postponed to Saturday the 28th instant the Motion (of which he had given notice for this day) for a Committee of the whole Council on the Bill "for the acquisition of land for public purposes."

MR. ELIOTT moved that a communication received by him from the Government of Fort St. George relative to the above Bill be laid upon the table and printed.

Agreed to.

NAWAB OF THE CARNATIC.

MR. ELIOTT moved that two communications received by him from the Government of Fort St. George be laid upon the table and referred to the Select Committee on the Bill "for repealing Act I of 1844 (for securing certain immunities and privileges to His Highness the Nawab of the Carnatic, his family, and retinue.")

Agreed to.

CALCUTTA PORT-DUES AND FEES.

MR. CURRIE moved that the Bill "for the levy of Port-dues and fees in the Port of Calcutta" be referred to a Select Committee consisting of Mr. Grant, Mr. Eliott, and Mr. Currie.

Agreed to.

The Council adjourned.

Saturday, March 28, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	D. Eliott, Esq.,
Hon. Major General J. Low,	C. Allen, Esq.,
Hon. J. P. Grant,	P. W. LeGeyt, Esq., and
Hon. B. Peacock,	E. Currie, Esq.

MOFUSSIL MUNICIPAL LAW.

THE CLERK presented to the Council a Petition of Inhabitants of Dacca against the system now in force for managing the Conservancy of that City. The Petitioners prayed for the enactment of such Laws as would prevent the abuses complained of by them.

BOMBAY UNIVERSITY.

MR. LEGEYT said, he had now to move the first reading of a Bill "to establish and incorporate an University at Bombay." The Bill almost exactly followed the Act lately passed by the Council for establishing and incorporating the University of Calcutta. The Senate of the Bombay University, like the Senate of the Calcutta University, was composed of ex-officio and other Fellows,—the Governor of Bombay was Chancellor, the Chief Justice Vice-Chancellor, and the Bishop and Members of Council ex-officio Fellows. To these had been added other Fellows selected from different sections of the community, and whose presence in the Senate would render the University catholic in its character.

The objects of an University, and its intended mode of operation, had been so recently brought to the attention of the Council by the Honorable and learned Chief Justice in the lucid and able speech with which he introduced the Bill for Calcutta, that he felt it would be a mere waste of time on his part to go over the same ground. The objects of an University at Bombay were precisely identical with the objects of a University at Calcutta. The field for such an Institution was necessarily much more limited in Bombay than in the Metropolis of British India; but small as the Western Presidency was both in territory and population when compared with the vast and populous Provinces subject to the Presidency of Fort William, he was happy to be able to say that a lively interest had long been taken in Bombay in the cause of Education by all classes who were able to appreciate the benefits which it conferred.

It was probably in the knowledge of some Members of the Council that, towards the beginning of the last year, a shadow had been cast on the educational system in Bombay. It was impossible to deny that that shadow had been justly cast. But he believed he might safely say that the result had been one of unmixed good. From the year 1836, the educational system in Bombay had been administered by a Board of Education composed of European and Native gentlemen, who had under them three or four English Colleges and ten English Schools besides numerous Vernacular Schools. In these Colleges and Schools, annual examinations were held, and Reports were furnished from each to the Board purporting to give the results attained in it during the year. Up to last year, the examinations were conducted, and the Reports written, by persons connected with the Institutions the students of which were examined; and certainly it must be confessed that these Reports invested the Institutions with a much higher degree of merit than, last year, they were seen to deserve. A Director of Public Instruction was appointed early in 1855, and one of the results of that appointment was the election by Government of independent Examiners to the Institutions which had been under the supervision of the Board of Education. The Reports sent in by these Examiners respecting the Elphinstone College at Bombay and the Poona College in the Department of English Literature were eminently unsatisfactory. But he trusted that the shadow cast, at that period, over the system of Education in Bombay, had now passed away, and given place to a better state of things. The gentleman who had reported on the College at Bombay, and who had gone deepest into the system in operation, had since been appointed Director of Public Instruction in the Presidency; and there was no reason to suppose that he would throw a gloss

over the real state of any of the Institutions under him so as to conceal any real defects.

The Colleges and Schools which were under the supervision of the Board of Education would be affiliated at once to the University. Their number was small; but he believed they would soon be followed by many other Institutions which were supported by Societies and private endowments, and which would hail with great satisfaction the University as their Alma Mater.

He could not, he thought, over-estimate the benefits which the establishment of an University on the principles proposed were likely to confer on the community at large.

He considered, too, the present moment had been most happily chosen for the development of the plan set forth in the Honorable Court's memorable Despatch of the 18th of July 1854. Taken in connexion with the great State questions of judicial administrations which the Council had just sent forth to the Public in the shape of the proposed new Codes of Civil and Criminal Justice, he could not but believe that the Universities must and would be found, under proper management, to be most useful aids to the success of those great measures. We had been emphatically told that our Mofussil Courts and our Mofussil Bar did not enjoy the confidence of the Public, because the Judges of those Courts were ignorant of Law and uneducated, and the Pleaders, with a few honorable exceptions, skilled only in legal chicanery and evasion. This state of things need no longer exist when there were Universities at hand with the power of certifying to the judicial knowledge and fitness of every man who chose the administration or practice of Law for his future occupation in life. And he hoped the day was not far distant when it would be either a law of the land or an inflexible rule not to admit Pleaders into our higher Courts in the Mofussil who had not previously graduated in one of the Universities in the Department of Law. He would also rejoice to see that the choice of persons for the office of Moonsiff would likewise be restricted to graduated Pleaders who had practised a certain time in the Courts. At present, the Moonsiffs were chosen occasionally from the Native Bar, much oftener from amongst the Cutcherry servants. It could not be contended that the present state of the Native Bar, or the antecedents of the Cutcherry servants as a body, were the best guarantees for fitness for the office of Judge. The Cutcherry servants entered service at a very early age in the lowest grades of office. Some of them, it must be admitted, rose by unflagging industry and uniform good conduct; but how many more of them had crept up to the judicial seat by nepotism, by cringing, and by other unauthorized and sordid means! It was not possible that men so selected could enjoy the confidence of the Community amongst whom they had lived all their lives, and who were perfectly acquainted with all their antecedents. Yet, it was no less the truth that many Native Judges now in the Mofussil were persons who had been taken from the ranks of the Cutcherry and Adawlut Servants, and now filled their important offices—some worthily, to their own honor, but the great majority in a manner which did not give the satisfaction and inspire the confidence which every Judge ought to command. His Honorable and learned friend (Sir Arthur Buller), who was not present to-day, had said, in his admirable speech the other day on the Bill relating to Criminal Procedure, that the great want in our Mofussil Courts and in our Mofussil Bench was the absence of all legal training. The Universities to be established, would supply an easy remedy for this defect. Why should not European aspirants to the Bench in the Mofussil be compelled to take a degree in Law, in addition to the required acquisitions in other branches of knowledge which were now exacted from them? It was an acknowledged fact amongst all civilized nations that the best course of training for the Bench was practice in the Bar. Then, why should not a young covenanted officer who selected the judicial line for his walk in life, be compelled to graduate in Law in one of the Indian Universities, and why, after he had so graduated, should he not be appointed to the post of Public Prosecutor in a Mofussil Court—an appointment which his Honorable and learned friend (Sir Arthur Buller) had stated he considered to be a most desir-

able element in our civil and criminal administration? A graduate of one of the Universities might be most advantageously sent to a Mofussil Court as a Government Advocate to conduct criminal prosecutions, advise Magistrates in the conduct of cases, and take charge of all civil suits in which the Government was concerned. Such a school of training for the Bench would be as good a one as had ever yet been attempted; and he would make that training the road, and the only road, to the Mofussil Bench.

In conclusion, he thought that, if the establishment of Universities would do nothing more than give these facilities for the improvement of the judicial system, it would be hailed by the community of India as one of the greatest boons that had ever been conferred on the country. But it was clear to him that it would ensure many more advantages for the Public.

With these observations, he begged to move the first reading of the Bill.

The Bill was read a first time.

POLICE AND CONSERVANCY (SUBURBS OF CALCUTTA AND HOWRAH.)

MR. CURRIE moved the second reading of the "Bill to make better provision for the order and good government of the Suburbs of Calcutta and of the Station of Howrah."

The Motion was carried, and the Bill read a second time.

ACQUISITION OF LANDS FOR PUBLIC WORKS.

MR. ALLEN moved that the Council resolve itself into a Committee on the Bill "for the acquisition of land for public purposes;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

In doing so, he said, since the Bill had been reported on by the Select Committee, two communications had been received respecting it—one from the British Indian Association, the other from the Government of Madras. The communication from the British Indian Association went against the whole principle of the Bill, and sought to introduce into this country the English custom of passing a separate Act for every case of taking land for a public work. The whole Petition, in fact, was directed against the principle of the Bill; and as the Council had affirmed that principle by its vote in favor of the second reading, he did not think it necessary to make any further remarks upon the Petition.

With regard to the suggestions and objections contained in the communication from Madras, he might mention that they were not of any great importance. Several had been anticipated by the Select Committee, and he was prepared with Motion Papers which would meet others.

The Motion to go into Committee on the Bill was carried.

Section I was passed after an amendment.

Section II provided that land may be taken by Government under the Act after a declaration that it is needed for a public purpose.

MR. PEACOCK said, he had an amendment to move in this Section. The Section must be considered together with Section XXIX. It said—

"Whenever it appears to the local Government that any land is needed for a public purpose, a declaration shall be made to that effect."

The declaration was to be conclusive that the land was required for a public purpose, and to bring into operation the procedure provided by the Act.

Section XXIX provided;—

"When any person, with the sanction of the Governor General of India in Council, shall undertake at his own cost any work of public utility, the local Government may declare, in the manner prescribed by Section II of this Act, that any land required by such person for the execution of the work, is needed for a public purpose; and thereupon such land may be taken under the provisions of this Act, and the local Government may vest such land in such person on his paying the compensation awarded under this Act, and all other expenses incurred in the acquisition of the land."

These two Sections included two classes of cases. Section II related to cases in which the Government might take land at its own expense for works to be conducted by itself, or in which it was so interested that it would provide the land required for them; and Section XXIX to cases in which the Government might take land for works of public utility undertaken by individuals as a matter of mere private speculation.

Where land was wanted entirely for Government works, or for works in which the Government was so interested that it would pay for the land out of the revenues of the State—as, for instance, in the case of the existing Railways—it might be right to leave it to the Government to declare that the land was needed for such purpose; but where land was wanted for works which, though they might be of public utility, were undertaken by private individuals for their own benefit, it ought to be left to the Government of India, not in its executive capacity, but in its legislative capacity—that was to say, to this Council—to make the declaration. There would be no difficulty on the score of expense, or on any other ground, in applying to this Council for a private Bill for the acquisition of land needed for a work of public utility. Under the Standing Orders, the Bill would be published for general information, and every person would then have an opportunity of expressing his opinion whether the work for which the land was required ought to be carried out or not. If it should appear, in any case, that the delay in carrying a private Bill through the several stages in the ordinary mode would frustrate the object—which, however, was not likely to be the case—the Council had the power of suspending the Standing Orders.

It appeared to him, therefore, that Section XXIX ought to be omitted; and that where a private individual wished to undertake a work of public utility at his own expense, he ought not to be put in possession of the land which he required for that work, except under a private Bill passed by this Council. He (Mr. Peacock) should, accordingly, move as an amendment that the word "needed" in line 11 of Section II be left out, in order that the words "required to be taken by Government, at the public expense, and for public purposes" be substituted for it. At the proper time, he should further move that Section XXIX be left out of the Bill.

The amendment was carried, and the Section then passed.

Sections III and IV were passed after amendments.

Sections V and VI were passed as they stood.

Section VII was passed after an amendment.

Section VIII was passed as it stood.

Section IX Clause 1, was passed as it stood.

Section IX, Clause 2, was passed after amendments.

Section X was passed after an amendment.

Sections XI to XV were passed as they stood.

Before Section XVI was proposed—

MR. PEACOCK suggested that the Bill contained no Section which stated how witnesses appearing before the Arbitrators, were to be examined. He did not know whether the intention of the Honorable Mover of the Bill was to recommend that the proposition of Her Majesty's Law Commissioners that witnesses should be examined without oaths or affirmations should be adopted; but he thought it would be well not to prejudge that question. Section XV provided that, on the application of the Arbitrators, the Collector should summon witnesses to be examined before the Arbitrators, and that such witnesses should be subject to the general Law "regarding persons summoned as witnesses before the Collector when acting judicially." If it were intended to retain the practice of administering oaths or affirmations to witnesses, there would be inconvenience in a provision which required that oaths or affirmations to witnesses at arbitrations under this Act should be administered by the Collector. It would be much more convenient to allow the Arbitrators to administer the oath. The Collector might not be at the place where the arbitration was held, and it would be very inconvenient to compel witnesses to go to the Collector's Cutcherry in order to be sworn. Formerly, where a Court of Law in England directed a reference to arbitration, the witnesses to be examined before the Arbitrators were sworn before the Court directing the reference, or a Judge of the Court, that they would speak the truth in their evidence at the arbitration. That practice had been found to be inconvenient and objectionable, and an Act was passed to enable the Arbitrators to swear the witnesses. It was much better that a witness who was to be examined upon oath should be sworn

at the time and place at which he was examined, than that he should be sworn before one person at one place to give true evidence on some future occasion when examined before a different person at another place.

He should, therefore, move that the following new Section be inserted after Section XV :—

"Every witness examined before the Arbitrators, shall be examined upon oath or affirmation, to be administered by, or made before, the said Arbitrators."

MR. CURRIE said, if the general Law should dispense with oaths and affirmations, the Section proposed would conflict with it. The Select Committee had left out the words in the margin of Section XV, and substituted the words in italics for them with the view of leaving the case to be governed by the general Law. On the other hand, he quite saw that there would be the inconvenience to which the Honorable and learned Member had alluded if the general Law should not dispense with oaths and affirmations.

THE CHIEF JUSTICE said, the object of the words in italics at the end of Section XV, clearly was to make, in a different way, the same provision which the words in the margin made—namely, for punishment for perjury. But the words in italics were—"Persons so summoned shall be subject to all the provisions of the Laws in force regarding persons summoned as witnesses before the Collector when acting judicially." Assuming that this implied that any person who gave false evidence before Arbitrators would be liable to punishment for perjury, he could only be so punished by his being brought within the category of persons summoned as witnesses before them when acting judicially.

The new Section moved by Mr. Peacock was then put, and carried.

Section XVI provided that the award of the Arbitrators should specify the amount of compensation to be given, the persons entitled thereto, and the proportions in which they were entitled. Further, that it should declare the costs of the arbitration, and by whom, and in what proportion they should be paid.

MR. PEACOCK said, he did not think that there was any provision in the Bill that, as a general rule, the Government, where it took land for public purposes, should pay the costs of an arbitration if a larger sum than that which had been previously offered by Government were awarded. It appeared to him that there ought to be a Clause to that effect. A man whose land was required of him by Government for public purposes, and who was compelled to go to arbitration about its value, and succeeded in obtaining a larger sum than Government had offered, was certainly entitled to the costs of the reference. It would not be fair to leave it to the discretion of the Arbitrators to impose the costs of the proceeding upon him. There might, probably, be some cases of unreasonable opposition, or of vexatious conduct during the enquiry. But, as a general rule, he thought that the costs of an arbitration should be borne by the Government, who were the promoters of the undertaking, if the amount of compensation awarded exceeded that which had been offered.

MR. ALLEN said, the idea was that, if the Arbitrators awarded less than the Collector had offered, then the owner, who had forced on the enquiry, should pay the costs; but that, if they awarded more, the costs should fall on the Government.

MR. PEACOCK said, he thought it would be better to have some express provision on the subject. As the Bill now stood, it would be entirely discretionary with the Arbitrators to throw the costs upon the owner even where they awarded more than the Collector had offered. In England, the rule was that, even if a Jury gave less than the sum offered, the promoters of the undertaking should pay one-half the costs, and the owner the other half. He did not know that that was a very correct principle; but he certainly thought that where the Arbitrators awarded more than the Government had offered, the Government, who would be taking the land by compulsion, ought to pay the costs.

MR. ALLEN said, he had no objection to insert an amendment to the effect that, if the award was for a larger amount than that which the Collector had offered, the Government should pay the costs of the Arbitration.

MR. GRANT asked, if the remune-

ration of the Arbitrators was to form part of the costs. If it was, the effect might be rather awkward, because then the Arbitrators would have to fix their own remuneration.

MR. ALLEN said, there was nothing in the Bill which provided for any remuneration whatever to the Arbitrators. Members of Punchayets always met without remuneration, and were willing to meet without it. In fact, respectable men would not like to take remuneration. He intended that the office of Arbitrator under this Bill should be an honorary office.

MR. GRANT said, he doubted very much whether, in the Presidency towns, persons would be found to accept the office on those terms.

MR. PEACOCK said, as there was no necessity for passing this Bill immediately, he would suggest that this Section stand over until the next Meeting of the Council, in order that a Clause might be prepared after more mature consideration than could be given to it at present.

Agreed to.

Section XVII was passed as it stood.

Section XVIII was passed after a verbal amendment.

Section XIX was passed as it stood.

MR. ALLEN, after Section XIX, moved the following new Section:

"When the amount of compensation to be paid for land taken under the provisions of this Act is determined by the award of the Collector or other Officer under Section V, he shall pay the amount awarded at the time when possession is taken of the land on account of Government. When the compensation is determined by the award of Arbitrators under Section XVI, the Collector or other Officer shall pay the amount awarded, with interest at the rate of 6 per cent. per annum from the time when possession was taken of the land on account of Government."

Agreed to.

Section XX provided that—

"If there exist any ground which, in the judgment of the Collector or other Officer, renders it improper to make immediate payment of the compensation, or of any portion thereof, to any of the persons having or claiming an interest in the land or in the compensation awarded in respect thereof, the amount, or such portion of the amount as he may deem sufficient, shall be invested in Government securities, and held in deposit, until an order of Court shall be obtained for the payment thereof."

MR. ALLEN moved that the following words be added to the Section:—

"If any such ground shall exist, payment of the compensation may be made according to the award. Provided always that nothing in this Act contained shall affect the liability of any person who may receive the compensation awarded for any land, or any portion of such compensation, to pay the same to the person lawfully entitled thereto."

Agreed to.

Sections XXI to XXIV were passed as they stood.

Section XXV was passed after an amendment.

Section XXVI was passed as it stood.

Section XXVII provided that any person obstructing the setting out of line-works, displacing land-marks, &c., should, on "conviction before a Magistrate," be liable to imprisonment, or fine, or both.

MR. PEACOCK moved that the words "before a Magistrate" be left out. An offence against the Section might be sufficiently punished with a very small fine, and the Magistrate might be at a distance. It would hardly be necessary to carry the offender all the way before the Magistrate for the purpose of having such a case adjudicated. He thought it would be better to leave these cases to be dealt with in the ordinary mode, which would be by a competent officer on the spot. He should, therefore, move that the words "before a Magistrate" be left out. In that case, the ordinary rules of Law would apply.

The amendment was agreed to, and the Section then passed.

Section XXVIII was passed as it stood.

Section XXIX being proposed—

MR. PEACOCK said, for the reasons he had already stated, he should move that it be omitted, leaving the object for which it was intended, to be provided for by private Acts.

MR. GRANT asked, whether it was intended that the Collector, if, under Section XX, he paid to the wrong person the compensation awarded by the Arbitrators, should be liable for the wrong payment.

MR. PEACOCK said, where a Collector wished to take land under the provisions of the Act, he would affix a notice upon the land, he would publish a notice by proclamation in the neighborhood, and he would serve a

notice upon the persons known or believed to have an interest in the land. If the persons interested appeared upon the notice, they would appoint an Arbitrator to determine the value of the land and of their respective interests. The award of the Arbitrators would be *prima facie* proof of the rights of those in whose favor it was made, and the Collector would be indemnified for making payment according to the award. But if there were any ground for doubting who were the proper persons to receive payment, the money would be paid into the Court where the rights of the parties would be determined.

MR. GRANT said, he objected to forced arbitration of conflicting claims even in the case of claimants who appeared on the notice. He was afraid, however, that he had passed by the Sections which provided for such arbitration.

MR. CURRIE said, the question of providing by arbitration for the adjustment of conflicting interests was a very perplexing one, and had occasioned great difficulty in the preparation of the Bill. But as he understood the Bill as it now stood, there would be no enforced arbitration of such interests. Section VI said:—

"If the Collector or other Officer shall be unable to agree with the persons who have attended in pursuance of the notice, and whose claims appear to him to be valid as to the amount of compensation to be allowed, or if any dispute shall arise as to the apportionment of such amount, the amount of compensation or other matter in dispute shall be referred to the determination of arbitrators, to be appointed in the manner hereinafter provided."

The mode of appointing the Arbitrators was provided by Section IX. If the interest was joint, the only matter to be settled under Clause 1 of that Section would be the value of the land. Clause 2 provided that—

"If there be several persons having distinct and separate interests in the matter in dispute, and they cannot agree in the appointment of an arbitrator on their behalf, it shall be competent to the Collector (subject to the orders of the Commissioner or other superior revenue authority) to refer each of such distinct and separate interests to a separate arbitration, or for the purpose only of determining the amount of compensation to be allowed for the land, to select any one of the persons interested whose interest appears to him to qualify such person to represent the others; and the person so selected shall appoint an arbitrator on behalf of all the persons interested in the matter in dispute."

If the claimants did agree in the appointment of an Arbitrator on their behalf, of course that Arbitrator would determine, not only the value of the land, but the shares in which it should be divided. That would be an arbitration by consent. But if parties having distinct and separate interests in the land—a Zemindar and Putneedar, for instance—could not agree in the appointment of an Arbitrator, then the Collector might have one Arbitration to determine how much was the value of the Zemindar's interest, and another Arbitration to determine how much was the value of the Putneedar's interest; or he might choose either the Zemindar or the Putneedar for the purpose of appointing an Arbitrator to determine the whole amount of compensation to be awarded for the land. So that it appeared to him (Mr. Currie) that there was to be no enforced arbitration of conflicting interests between the parties interested. The value of the Zemindar's claim might be determined by arbitration, and the value of the Putneedar's claim might be determined by arbitration. It was quite possible that, in that way, the Government might have to pay more for the land than if only one arbitration were appointed to determine the value of the land, and the apportionment of their respective shares were left to be settled afterwards by the Zemindar and Putneedar amongst themselves; but in any case, there would be no enforced arbitration of their relative interests.

THE CHIEF JUSTICE said, he thought that the Honorable Member's explanation met only one class of cases—cases in which, several persons having admittedly separate and distinct interests in a piece of land—such as a Zemindar or Putneedar, or a tenant under a long lease and the reversioner,—could not agree in the appointment of an arbitrator to determine the value of their respective interests. But how would it be if there were rival claimants to the same piece of ground? How would it be if A. said, "This land is mine," and B. said—"No; it is mine?"

MR. CURRIE replied, in such a case the Collector would determine, under

Mr. Peacock

Section V, which of the claimants was entitled.

MR. ALLEN added that, if the Collector would not do this, he would deposit in Court the amount of compensation allowed for the land.

MR. GRANT said, he did not understand that the Bill required the Collector to deposit the amount in Court. He rather thought that it gave him power to exercise his own judgment in the matter. If he should exercise his own judgment, and should exercise it ill, and pay the amount over to the wrong person, would he be liable or not liable?

MR. ALLEN said, he would not be liable.

MR. GRANT replied that, in that case, he certainly objected to this part of the Act. The Collector would take the land, and might pay the value of it to the wrong person. The land would be gone, and the money might also be gone, by reason of the insolvency of the person to whom it had been paid; and then the rightful claimant would be without a remedy.

MR. PEACOCK said, it appeared to him that in the provision on this subject, there was a *casus omissus*. As he understood the Bill, it provided for the case of persons claiming a joint interest in land, and for the case of persons claiming separate interests in land; but it did not provide for the case suggested by the Honorable and learned Chief Justice of two or more persons each claiming, not a joint or separate interest, but an exclusive interest in the whole land. In the first two cases, it appeared to him, that, under the Bill, the Collector might compel the parties to refer to arbitration, not merely the value of the land, but also their respective rights and interests in the land. In the last case, there was no power to compel them to refer any thing more than the question of the value of the land. But after all, would it be right to force upon the claimants such a tribunal for the determination of their claims? It appeared to him that all that ought to be compulsorily settled was the value of the land to be taken. If the land were not required to be taken for a public purpose, rival claimants to the land could not be forced to refer their claims to arbitration. Why, then, when the land was required for a public purpose, and a sum of money was to be substituted for it, should the parties be bound compulsorily to refer to arbitration their respective claims to the money? The award would not be final: it might be set aside by a Court of Law. But if the parties were compelled to go to arbitration, they would be put to the expense of two tribunals, if they were not contented to abide by the decision of the arbitrators.

MR. GRANT said, he had no objection to the Collector being secured from the liability of paying twice if his payment in the first instance were made to the person in possession of the land, because, in that case the rival claimant, if he conceived his to be a better title, might file a suit, and take out an injunction from a Court of Law to restrain him from making such payment. But as the Bill now stood, the Collector might pay to a person out of possession. If he did that, and a rival claimant were afterwards declared entitled, there might be no means of recovering the amount paid, by reason of the insolvency of the person to whom it had been paid.

MR. PEACOCK said, he thought the Bill as it stood would give rise to many difficult questions. Suppose A. and B. came forward to claim the same land. The dispute between them might depend upon a question of boundary. Each might say the land to be taken lay within the limits of his boundary. The Collector would say, "I have nothing to do with that question. All I shall do is to have the value of the land determined."

The Collector, then, would appoint an Arbitrator for the Government. But who would appoint an Arbitrator for the rival claimants? A. might contend that he had a right to appoint. B., on the other hand, might claim to appoint the Arbitrator. It appeared to him (Mr. Peacock) that there was no provision in the Bill for such a case.

After some conversation—

MR. ALLEN said, he had not the slightest objection to providing that the Collector should deal only with the person in possession, and he would prepare a Section for that purpose, in substitution of Section XXIX, before the next Meeting of the Council.

Section XXIX was then put, and negatived.

Section XXX was passed as it stood.

Section XXXI was passed after an amendment.

The Council having resumed, the President reported progress with the Bill.

CRIMINAL PROCEDURE (BENGAL.)

THE CHIEF JUSTICE moved that the Report of the Standing Orders Committee on the Petition of certain British subjects, praying to be heard before the Council against the Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in Bengal, for simplifying the procedure thereof, and for investing other Courts with Criminal Jurisdiction," be adopted.

In doing so, he said the simple question referred to the Standing Orders Committee was whether that part of the prayer of the Petitioners in which they sought liberty to be heard by Counsel, or rather by themselves, in support of their Petition, fell within the 29th Standing Order. That Standing Order, as the Council was aware, was as follows:—

"If a Bill be pending peculiarly affecting private interests, and any person whose interests are so affected apply by petition to be heard by himself or his counsel upon the subject of the Bill, an order may be made upon the Motion of a Member, allowing the petitioner to be so heard either before the Select Committee on the Bill, or before a Committee of the whole Council, provided the petition be received by the Clerk of the Council before the Report of the Select Committee on the Bill shall have been presented."

And the final words of the Order were these:—

"In no other case or manner shall any stranger be heard by himself or by his Counsel."

Therefore, this Standing Order not only gave affirmatively the right to persons to be heard, in a particular class of cases, by themselves or by Counsel at the bar of the Council, but it declared that, except in that particular class of cases, no person should be so heard. Consequently, the simple question for the Standing Orders Committee to consider was whether the Bill against which the Petitioners prayed to be heard, could be said to be a Bill "peculiarly affecting private interests." The very frame and argument of the Petition were rather that the privilege which the Petitioners wished should be continued was a privilege which had been given on public grounds, and which affected a very large portion of the community. It did appear to the Members of the Standing Orders Committee that, whether the Bill were considerd as one for the better administration of justice—and the question must be looked at in both lights—it could not be said to affect private interests in the sense of the Standing Order. He might adduce an example from another class of the community. He would suppose that a Bill was brought into the Council to enact that there should be no trust of land unless that trust were declared by writing. It could hardly be contended that every Hindoo whose civil rights, by virtue either of the Regulations or of the Statutes which govern the practice of the Crown Courts, were determinable by Hindoo Law, would be entitled to be heard before the Council against such a measure, because it would modify Hindoo Law, and strike at the root of Benamee transactions. Private interests could mean only interests distinct from those of the public, or of any large class of the community. Therefore, without going farther into the question, and raising what would be little better than a logomachy, he would simply move that the Report of the Standing Orders Committee be adopted.

Agreed to.

NOTICES OF MOTIONS.

MR. LEGEYT gave notice that he would, on Saturday the 4th of April next, move the second reading of the Bill "to establish and incorporate an University at Bombay."

Also that he would on the same day move that the Standing Orders be suspended to enable him to pass the Bill through its subsequent stages.

POLICE AND CONSERVANCY (SUBURBS OF CALCUTTA AND HOWRAH.)

MR. CURRIE moved that the Bill "to make better provision for the order and good Government of the Suburbs of Calcutta and of the Station of Howrah" be referred to a Select Committee consisting of Mr. Allen, Mr. LeGeyt, and the Mover.

The Council adjourned.

Saturday April 4, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	D. Eliott, Esq.,
Hon. Major General J. Low,	C. Allen, Esq.,
	P. W. LeGeyt, Esq.,
Hon. J. P. Grant,	E. Currie, Esq., and
Hon. B. Peacock,	Hon. Sir A. W. Buller.

UNCOVENANTED SERVANTS (FORT ST. GEORGE.)

MR. ELIOTT presented the Report of the Select Committee on the Bill "for the more extensive employment of Uncovenanted Agency in the Revenue and Judicial Departments in the Presidency of Fort St. George."

NAWAUB OF THE CARNATIC.

Also the Report of the Select Committee on the Bill "for repealing Act I of 1844."

BOMBAY UNIVERSITY.

MR. LEGEYT moved that the Bill "to establish and incorporate an University at Bombay" be now read a second time.

The Motion was carried, and the Bill read a second time.

ACQUISITION OF LANDS FOR PUBLIC WORKS.

On the Order of the Day for the adjourned Committee of the whole Council on the Bill "for the acquisition of land for public purposes" being read, the Council resolved itself into a Committee for the further consideration of the Bill.

MR. ALLEN moved that the words in Section XVI which related to the costs of arbitrations, be left out.

The Motion was agreed to, and the Section then passed.

MR. ALLEN moved that the following new Section be inserted after Section XVI:—

"The award shall also declare the costs of the arbitration, and by whom and in what proportion they shall be paid. All costs incurred for the purpose only of determining the amount of compensation to be allowed for the land, shall be borne by the Government, unless the Arbitrators shall award as compensation the same or a less sum than shall have been offered by the Collector or other Officer; in which case, each party shall bear his own costs so incurred, and shall also pay a moiety of the fees of the Arbitrators. All other costs of the arbitration shall be in the discretion of the Arbitrators. The Arbitrators, in making their award, shall be entitled to a reasonable fee for their services, the amount of which shall be fixed by the Collector or other Officer, subject to the orders of the Commissioner, or other superior Revenue authority."

MR. PEACOCK said, it appeared to him that the words "all other costs of the arbitration shall be in the discretion of the Arbitrators" were objectionable, and he should move, as an amendment, that they be omitted. It would be rather difficult now to argue why they should be omitted, because the Council did not know upon what principle the other Sections would be settled. Clause 2 of Section IX provided as follows:—

"If there be several persons having distinct and separate interests in the matter in dispute, and they cannot agree in the appointment of an Arbitrator on their behalf, it shall be competent to the Collector (subject to the orders of the Commissioner or other superior Revenue authority) to refer each of such distinct and separate interests to a separate arbitration; or, for the purpose only of determining the amount of compensation to be allowed for the land, to select any one of the persons interested, whose interest appears to him to qualify such person to represent the others; and the person so selected shall appoint an Arbitrator on behalf of all the persons interested in the matter in dispute."

The meaning of this provision he understood to be that the Collector was to have the power to compel persons claiming a separate and distinct interest in land required for a public purpose, to refer the case to arbitration, not merely in order that the Arbitrators might fix the amount of compensation which should be paid for the land, but that they might decide on the several interests claimed. Where the Government wished to take a piece of land for a public purpose, and the amount of compensation to be given for the land was referred to arbitration, it appeared to him that the Government ought to pay the costs of the arbitration if the amount awarded by the Arbitrators was more than that which had been offered by the Collector; and that if the amount awarded was less, each party, as the land would be taken by compul-

sion, should pay his own costs. But if there were two or more persons claiming conflicting interests in the land, and the Collector was to have the power of referring their disputes to arbitration, he did not see why the Government should be called upon to pay the costs of such arbitration. The question between the claimants might be, for example, one of boundary. A might contend that the land was within the limits of his estate, and B might contend that it was within the limits of his. Why should it be in the power of the Arbitrators to impose upon Government the costs of deciding whether the land belonged to A or to B? The Government had nothing to do with the question of right between the claimants. All that Government wanted would be to purchase the land; and, therefore, the only question in which it would be interested, would be the amount of compensation to be paid for it. In England, when land was required for a public purpose, and there was a dispute as to the amount of compensation to be given for it, the question was referred to a Jury or to Arbitrators, who did nothing more than fix the value of the land. If conflicting claims were set up, the amount awarded as the value of the land was paid into Court, and it was left to the Court to determine the rights of the respective claimants to the purchase-money, in the same manner as it would have been left to the Court to determine the rights to the land itself if it had not been taken. The person in possession of the land at the time it was taken, would be presumed to be the owner of the land, and consequently entitled to recover the money to be paid for the purchase of it, unless some one else could prove a better title. It appeared to him (Mr. Peacock) that the same principle should be followed here, and that it would be necessary, therefore, to alter Clause 2 of Section IX so that, if conflicting claims were set up to land required to be taken for a public purpose, the Collector should have the power to refer to arbitration, not the disputes respecting the title to the land, but only the value of the land, and the amount of the compensation to be given for it. But even if the Council should determine that the disputes respecting the right to the land should be referred, he certainly thought that it should not be left to the discretion of the Arbitrators to throw the costs of such arbitration upon the Government.

MR. ALLEN said, he thought it would be more convenient if his Section were agreed to in the present stage in the form in which he had moved it, and the question raised by the Honorable and learned Member discussed on the recommittal of the Bill, when Clause 2 of Section IX might also be further considered.

MR. PEACOCK'S amendment was, on this, withdrawn, and Mr. Allen's Motion agreed to.

The Preamble and Title of the Bill were agreed to.

The Bill having been reported—

MR. ALLEN moved its recommittal.

Agreed to.

MR. ALLEN moved that the following new Section be inserted after Section VI:—

"If, upon the said enquiry, any question arise respecting the title to the land, or any rights or interests therein between two or more persons making conflicting claims in respect thereof, the person deemed by the Collector or other Officer to be in possession as owner, or in receipt of the rents as being entitled thereto, shall be held to be, as between such persons, the person having a valid claim, and interested in the matter in dispute."

MR. PEACOCK said, he thought that this Section required some limitation. He understood the Honorable Member's object to be that the person deemed by the Collector to be in possession should be deemed to have a valid title as between the several claimants themselves, for the purpose of taking the measures necessary for settling the value of the land and the amount of compensation to be paid for it. The Honorable Member, he apprehended, did not mean that the person deemed by the Collector to be in possession should be deemed to be the owner of the land; for in that case, the Collector would decide the question of title to the land, and his decision, whether right or wrong, would be conclusive; because if, after he "deemed" one person to be in possession, the others should seek to contest their rights in the Civil Court, the Civil Court would tell them—"We cannot interfere. The Collector deems A to be in possession;

and the Legislature has enacted that the person whom the Collector deems to be in possession, shall be held to be the owner" That was not, he imagined, what the Honorable Member meant to be the effect of the Section. All that he (Mr. Peacock) understood him to mean, and the utmost that he considered that the Act ought to provide, was, that the person deemed by the Collector to be in possession should be held to be the owner merely for the purpose of taking such measures as were necessary for fixing the value of the land, and the amount of the compensation to be paid for it. He should therefore move as an amendment that all the words after the words "entitled thereto" be left out of the Motion, and that the words "shall, for the purpose only of taking such measures as may be necessary for fixing the value of the land and the amount of compensation to be paid for the same, be held to be the person interested in the matter in dispute" be substituted for them.

MR. CURRIE said, he would remark that Section V provided that the Collector should enquire into the value of the land, and the rights of the persons interested; and that, if he and all the persons interested who appeared before him, and whose claims he considered valid, agreed as to the amount of compensation to be allowed, and the apportionment thereof, he should make an award for the same. It then proceeded to say that such award should be final and conclusive "so far as respects the value of the land and the amount of compensation" It seemed to be obvious from this that the award was intended to be final and conclusive with respect to the value of the land and the amount of compensation, and to nothing else.

THE CHIEF JUSTICE said, the Honorable Member in charge of the Bill did not propose to give the Collector the power of saying that the person whom he found in possession was the real owner, so as to bind the question of title between him and other persons. He only proposed to point out that the Collector would be safe in dealing with one whom he found in possession, and that such person should be the one to appoint an Arbitrator to protect the interests of the estate; and the object of the amendment moved by the Honorable and learned Member opposite, seemed to limit the proposed Section to that.

MR. GRANT remarked that Section V applied to cases in which the Collector should agree with the persons interested as to the amount of compensation to be allowed, and its apportionment. Section VI applied to cases in which the Collector and the persons interested should not agree.

MR. PEACOCK said, he also had intended to direct attention to this point. By Section V, if the Collector and all persons interested in the land agreed as to the amount of compensation to be allowed, the Collector should make an award which was to be final and conclusive, as to the value of the land and the amount of compensation to be paid for it. But if they could not agree, Section VI provided that the matter should be referred to arbitration, and in that case the claimants were to appoint one Arbitrator to protect their interests as against the Government, and the Collector would appoint another to protect the interests of the Government.

MR. CURRIE said, he saw no objection to the introduction of the words proposed by the Honorable and learned Member; but he questioned whether the words "as between such persons" should be omitted. Supposing that the property required to be taken was a putnee estate; that A and B made conflicting claims to the putnee; and that C was the zemindar. C would certainly have a valid claim as respects the zemindaree interest. But if, in adjudicating respecting the putnee interest, the Section provided that the person whom the Collector deemed to be in possession should be held to be *the* person interested in the matter in dispute—that is, in the compensation to be awarded for the land—it might shut out the zemindar, as to whose claim there was no question.

After some conversation—

THE CHIEF JUSTICE said, considering that this was a very important question, and that any hasty decision upon it might lead to great inconvenience in taking land for public purposes, and possibly to the necessity of amending the Act by a new measure, he would

suggest to the Honorable Member for the North Western Provinces that the new Sections in question should be seen and carefully considered by the Members of the Council before they were finally settled. He (the Chief Justice) had not had an opportunity of seeing them until this moment: the Honorable and learned Member opposite (Mr. Peacock) had seen them only last night; and he thought it would be better to postpone the final settlement of them until after they should have been circulated. He therefore moved that the further consideration of the new Clauses proposed on the re-committal of the Bill, be postponed.

MR. CURRIE said, in that case, he thought it would be very desirable to arrange that the more important amendment which the Honorable and learned Member on his right (Mr. Peacock) had intimated an intention of proposing with respect to conflicting claims and separate interests, and which affected the whole measure, should likewise be circulated before being brought forward in Committee. He understood the Honorable and learned Member to say that the references to arbitration under the Bill should be limited to the determination of the value of the land and the amount of compensation to be given for it.

MR. PEACOCK said, it would probably be well to take the opinion of the Council now on the question whether there should be forced arbitrations of conflicting claims.

MR. ALLEN said, he was not quite sure what "conflicting claims" might mean. If two men, each having undoubtedly a share in an estate, did not agree as to the value of each share—if, for instance, in a putteedaree estate upcountry, A disputed with B as to his fractional right in the estate—that, he (Mr. Allen) thought, was a case of conflicting claims which should be determined by forced arbitration, subject always to an appeal to the Civil Court, if the appeal were instituted within three months from the date of the award. But if A disputed the right of B to an estate on the ground that he was the legitimate son, and that B was illegitimate—he (Mr. Allen) thought that that was a case in which the parties ought not to be forced to go to arbitration. The Secretary to the Sudder Board of Revenue here had strongly urged that, where there were parties disputing only as to fractional shares in land, their disputes should be settled by arbitration. Something to the same effect was enacted by Regulation IX of 1833 with respect to boundaries, and he (Mr. Allen) had seen the provision operate to great advantage in the North Western Provinces. Section V of the Regulation to which he referred, enacted that—

"Whenever any judicial question may be depending before a Collector, or other Officer employed in making settlements under the provisions of Regulation VII of 1822, in which the interests of justice may, in the opinion of such officer, require that the case be decided by arbitration, it shall be lawful for him to fix, under the instructions with which he may be furnished by the superior Revenue Authorities, a period within which the parties must produce the award."

By subsequent Sections, if the parties refused or neglected to produce the award within the term fixed, the Collector or other Officer might summon a Punchayet for the trial of the matter; the decision of such Punchayet to be final, unless the Commissioners, subject to the control of the Sudder Board of Revenue, should think proper, for any special reason, to refer the case to another Punchayet. This Bill proposed that the award of the Arbitrators should not be final.

MR. PEACOCK said, if the award of the Arbitrators were to be final, there would probably have been some good in making the parties go to arbitration. But the Honorable Member did not propose that the award should be final. Either party might institute a suit in the Civil Court for the purpose of setting the award aside. What benefit would be derived from compelling them to go to arbitration when the award of the Arbitrators was not to be final; and why should the Government force such a tribunal upon them because it wanted to buy the land, when it could not force it upon them if it did not want to buy the land? Suppose neither of the parties wished to go before Arbitrators, and did not intend to abide by their decision. Why should the Government compel them to go through what he must call an unnecessary form, which might involve considerable delay and expense? If it did not want the land, it could not make

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them contest their claims before Arbitrators: and it seemed to him that it would be very arbitrary to make them do so, because the Government wanted to purchase the land by compulsion. The object of the Bill was to enable Government to acquire land for public purposes. This was not a Bill to prevent persons from being litigious. All that the Legislature had to provide was that the fair value of the land required to be taken, should be fixed, and that, when it was fixed, as the land could not have been run away with by a wrongful owner, so the money which would be substituted for the land, should be so secured that the right of the real owner to it would be protected. The way to do that, where there were conflicting claims to the land, was to deposit the money in the Civil Court, and leave the claimants to prove their title there. That, as he had said before, was the principle adopted in England. If the amount of compensation which should be given for a piece of land required for a public purpose could not be agreed upon, the question was referred to a Jury who assessed the amount. But the Jury had no power to determine the title of persons claiming separate and distinct interests in the land. If there was any dispute as to right or interest, the Act provided that the amount assessed should be deposited in Court; that the person in possession should be deemed *primâ facie* entitled; and that, after due notice, the money deposited should be paid over to him, unless some other person should come in upon the notice and make out a better title.

MR. ALLEN said, he was perfectly aware that, theoretically, he had not a leg to stand upon; but practically, he thought he had. Two persons might be cultivating a piece of land without any dispute as to their interests. If, in taking the land for a public purpose, we deposited the purchase-money in Court, we should force them into litigation. It was a point of honor amongst Natives not to give up a claim without a decree. If the Collector gave a decree either way, the parties would submit, and not proceed further. At present, the Collector decided summarily with whom settlements of land revenue should be made, and he (Mr. Allen) knew of very few instances in which these decisions had been litigated in a Court of Law.

THE CHIEF JUSTICE said, he conceded to the Honorable Member for the North Western Provinces that it was very desirable to keep the money out of Court, if that were possible, and also that the deposit of it in Court might force the parties claiming interests in the land into litigation; because a claimant out of possession, who might have been lying by for some cause or another, might, when the money was paid into Court, be stimulated to come forward and litigate his title; and the party in possession would naturally take proceedings to get the money out of Court, which would bring the other claimant forward; and if this did not happen, then, as Mr. Trevor said, each might be afraid of the other, and the money might be left unprofitably in Court. For these reasons, he had no objection to give every facility to try disputes as to separate and distinct interests by voluntary arbitration. On the other hand, if the Honorable Member insisted upon forced arbitration, then, to attain his object, he should go farther than the Bill proposed to go, and should make the award of the arbitrators final. Otherwise, the party dissatisfied with the award might do what he could have done in the first instance if this Bill had not been passed —namely, resort to a Civil Court; and therefore, this Bill, instead of substituting, as it intended to do, a cheap and expeditious procedure for the determination of conflicting interests, would add the expense and delays of an arbitration to the expense and delays of a regular suit.

With respect to conflicting interests in land, there might be the case of A and B each claiming an exclusive interest in the same subject, but A being in possession, and B out of possession; then there might be the case of A and B claiming interests of a different nature in the same subject—a Putneedar and a Zemindar, or a landlord and tenant for instance; and then, again, there might be the case of A and B claiming joint interests in one subject. All these interests might admit of different considerations and different reasons for not being included in this Bill. For the second class of interests, he under-

stood that the Honorable Member in charge of the Bill proposed a separate and distinct arbitration. The first was a class of interests which he understood the Honorable Member to say he thought should not be included in the Bill. He (the Chief Justice) was prepared to allow parties in either case, if they agreed to submit to an arbitration, to have their disputes settled by Arbitrators; but he was not prepared to allow forced arbitration.

After some conversation, the Chief Justice withdrew the Motion he had made, and Mr. Peacock moved the following as an amendment on the new Section moved by Mr Allen:—

"That the Bill be referred back to the former Select Committee, with instructions to settle the same upon the principle of leaving it optional to persons having conflicting claims to refer such claims to arbitration or not, and that the further consideration of the Bill be postponed until after the Bill, as proposed to be amended, shall have been circulated amongst the Members of the Council."

Agreed to.

BOMBAY UNIVERSITY.

MR. LEGEYT moved that the Bill "to establish and incorporate an University at Bombay" be referred to a Select Committee consisting of the Chief Justice, Sir Arther Buller, and the Mover.

Agreed to.

Moved by the same that the Standing Orders be suspended to permit the Select Committee to present their Report at the expiration of four weeks from the date of the publication of the Bill.

The Chief Justice seconded the Motion, which was then agreed to.

NOTICES OF MOTIONS.

MR. ELIOTT gave notice that he would, at the next Meeting of the Council, move for a Committee of the whole Council on the Bill "for the more extensive employment of Uncovenanted Agency in the Revenue and Judicial Departments in the Presidency of Fort St. George."

Also for the adoption of the Report of the Select Committee on the Bill "for repealing Act I of 1844."

On the motion of the CHIEF JUSTICE, the Council adjourned till Saturday the 18th Instant.

The Chief Justice

Saturday, April 18, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. Major General J. Low.	C. Allen, Esq.,
Hon. J. P. Grant,	P. W. LeGeyt, Esq.,
Hon. B. Peacock,	E. Currie, Esq.,
D. Eliott, Esq.,	and
	Hon. Sir A. W. Buller.

SONTHAL DISTRICTS.

THE CLERK presented a Petition of David Andrew and of Hindoo Inhabitants of Kankjole praying that certain districts now subject to the provisions of Act XXXVII of 1855 (entitled "An Act to remove from the operation of the general Laws and Regulations certain Districts inhabited by Sonthals and others and to place the same under the superintendence of an officer to be specially appointed for that purpose") may be restored to the jurisdiction of the Regulation Courts.

Also a Petition from two Zemindars of Pergunnahs Ashwar and Sultanabad, with a like prayer.

Also a Petition of Inhabitants of Thannah Nurai, with a like prayer.

CIVIL PROCEDURE (BENGAL).

Also a Petition of Zemindars, Ryots, and Mahajuns of Beerbhoom against such portions of the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bengal" as relate to the jurisdiction of Moonsiffs.

Also a Petition of Zemindars, Mahajuns, and residents of Midnapore praying that provision might be made in the above Bill for retaining a Moonsiff in that Town.

MR. PEACOCK moved that these Petitions be printed, and referred to the Select Committee on the Bill.

Agreed to.

HINDOO POLYGAMY.

THE CLERK presented a Petition signed by the Honorary Secretary to the Association of Friends for the promotion of Social Improvement praying (with certain reservations) for the abolition of Hindoo Polygamy.

MR. GRANT moved that it be printed.

Agreed to.

SALES OF LAND FOR ARREARS OF REVENUE (BENGAL).

THE CLERK presented a Petition from several Protestant Missionaries residing in and near Calcutta in favor of the Bill "to improve the Law relating to sales of land for arrears of Revenue in the Bengal Presidency," and for other measures necessary for the protection of the Ryots.

MR. GRANT moved that it be printed, and referred to the Select Committee on the Bill.

Agreed to.

MOFUSSIL SMALL CAUSE COURTS.

THE CLERK reported that he had received from the Home Department of the Government of India an extract of a Despatch from the Honorable Court of Directors on the question of establishing Small Cause Courts in the Mofussil.

ACQUISITION OF LANDS FOR PUBLIC WORKS.

MR. ALLEN presented the Report of the Select Committee on the Bill "for the acquisition of land for public purposes." According to the arrangement made at the last Meeting, he said, the amendments recommended by the Select Committee had been printed and circulated, and every Honorable Member had received a copy of the Bill in the form in which they now proposed to submit it for adoption.

SONTHAL DISTRICTS.

MR. CURRIE presented the Report of the Select Committee on the Bill "to amend Act XXXVII of 1855." Some Petitions had been presented with respect to the Bill this day. They had been seen by the Select Committee, who thought it scarcely necessary that they should be printed. Amongst the connected papers was a Petition to the same effect as that received from Sultanabad; and the Select Committee had mentioned its general substance in their Report.

COMPULSORY LABOR (MADRAS.)

MR. ELIOTT moved the first reading of a Bill "to make lawful compulsory labor for the prevention of mischief by inundation, and to provide for the enforcement of customary labor to certain works of irrigation in the Presidency of Fort St. George."

In doing so, he said, on the second reading of the Bill introduced by the Honorable Member on his left (Mr. Grant) to amend the Law regarding the provision of carriage and supplies for troops and travellers, and to punish unlawful impressment, he had observed that the Bill permitted impressment on emergency under certain provisions and restrictions in two cases only, connected with the movement of Troops; but that it appeared to him that there was another case of emergency which it would be proper to provide for—that of sudden and serious damage occurring to tanks, rivers, channels, or other works, where, for the general good, immediate repair was of urgent necessity. He had said that the Madras Government had strongly represented the necessity of a power being vested in the Executive to press labor for this purpose. He had referred, for instance, to the case of a breach in the embankment of a river, which must be instantly stopped, or the whole neighboring country would be liable to devastation. In such cases, he had said, it had always been found necessary to press labor on the instant, in order that public mischief might be averted. But in the face of Section II of the Bill, and Clause 76 Chapter 16 of the Penal Code, this could not be done unless provision were made for legalizing compulsory requisitions for labor in such cases. He had thought at the time that this might be effected by an additional Section introduced into the Bill excepting such cases from the prohibition contained in Section II, supposing the Bill to be extended so as to include Madras, or a similar Bill to be proposed for Madras. But having since communicated with the Government of Madras on the subject, he had been informed that, in their opinion, it was advisable to give a positive authority for resort to compulsory labor on such emergent occasions by a separate Law.

The Madras Government had also expressed a strong opinion of the necessity of a Law for enforcing the obligation which by custom lies upon the village communities to afford the labor necessary to keep in repair the smaller water-courses within their bounds, leading from the main irrigation channels maintained at the expense of Government.

He had, therefore, prepared the present Bill, in which provision was made for both those objects.

With respect to the first object—namely, to make the compulsion of labor lawful—he begged to read some paragraphs of a letter from Mr. Forbes, Collector of Tanjore, acting, at the time he wrote it, as a Member of the Board of Revenue on deputation, which would be printed in the Appendix to the Bill:—

"In ordinary seasons, it is not often that a river breaks its banks; but when a breach occurs, the necessity for closing it is emergent. Omitting all irrigating and surplus channels, as far too numerous to mention, there are in Tanjore not less than a hundred and five rivers: the district is a small one: and it is obvious that, if a breach in the bank of one be not closed before its waters have burst into another, that other, unable to contain the additional flood thus poured into it, must break, and in its turn empty its accumulated contents into a third, until from North to South would be one wide scene of desolation.

"The heavy loss of life and property that must inevitably result from the waters of a large river forsaking their accustomed course, and sweeping over the face of the country, is by no means all that is suffered. Much land is permanently injured by the sand which the river deposits in its course; and the whole of the cultivation below the breach which depended on irrigation from the river, is deprived of its supply of water.

"The great emergency of the occasion arises from the rapidity with which a breach enlarges if left to the action of the water. In 1834, the Coodamoorty breached its banks to the extent of ten yards; and notwithstanding that every available measure was adopted to arrest the evil, the breach had widened to eighty yards before it could be closed. On this occasion, 400 trees, 6,000 bamboos, 30,000 cocoanut leaves, and 13,000 bundles of straw were expended, besides an outlay of 3,000 Rupees in the laborers' wages. The hurricane of 1853 occasioned 170 breaches; and, as I was Collector of the District at the time, I may take upon myself to assert, and I know that Major Lawford, who was then the Civil Engineer, will support the assertion, that, had not authority been exerted to repair the general damage, the cultivation of the ensuing year would have been very generally arrested.

"But the difficulty now felt probably does not arise from inability to admit the necessity for closing a breach, but from unwillingness to admit that it is necessary to force labor for the purpose. To this point, therefore, I shall now briefly advert.

"A breach may occur in the limits of a small village, the population of which is wholly inadequate to arrest the progress of the evil, or in the eastern part of a large village. To all whose lands are situated above it—that is, to the west—the breach is of no concern; and to give notice to those below it, whose cultivation depends on the water maintaining its usual course, would, by delay, cause such extension of the evil as no after efforts could retrieve. Moreover, in Tanjore, where the entire surface of the delta is cultivated, there is no spare labor; every landowner has his own farm servants; and, as the time of the freshes is also the season of cultivation, not a man will spare his laborers from his fields, if his own individual interest be not at stake. When a breach occurs, trees must be felled, straw must be had, and labor must be procured. Those interested are at too great a distance to supply either; those at hand are too selfish; and, unless authority be exercised, the breach must spread, the lands must be destroyed, villages must be swept away, and cultivation must be arrested.

"Hitherto the Collector's authority has never been questioned, and the established custom of the country has been followed. But when the Executive is transferred to the Civil Engineer, it is very questionable if the same obedience will be shown; and therefore it is that those who know the people, and are acquainted with the wants of the Province, have advocated a legislative Act."

In this Bill, what was proposed was to make the compulsion of labor lawful in the emergencies indicated; namely, when there was imminent danger of a destructive inundation from an anticipated breach in the embankment of a tank, river, or canal, or of an anicut or other like work, or when a breach had occurred, which, unless it were instantly stopped, would cause such an inundation. In such cases, and such only, it was asked that power might be given to the local authorities to cause a levy *en masse* of the laboring classes in the adjacent village or villages, to throw their labor on the embankment in such a manner as to prevent the impending danger, or to repair the breach which had occurred in time to stop the progress of the mischief already begun.

It was intended that the heads of villages should call on the laborers of their villages for their services on such emergencies on the requisition of the Officer in charge of the tank, or other

work, or of the Tehsildar; or, if neither of these Officers was on the spot, and the emergency admitted of no delay, on the demand of the Head of the village in which the danger arose. The Government of Madras insisted on—

"the absolute necessity of giving to the Heads of villages the power to make, of their own motion, a requisition for labor on emergency. That the matters to be provided for are emergent, and will not brook delay, is the sole ground on which the Government rest their demand for an Act to legalize forced labor; and if the power of immediate action be denied to the local Officer, and must be obtained from some superior who may at the moment be many miles away, the evil to be averted will be done before preventive measures are commenced, and the Act, when it is passed, will be of no practical use."

No force was to be used to compel the laborers to work when they were so called upon; but they would be liable to fine or imprisonment, or both, if they refused or neglected to do so, on conviction before an Officer vested with the jurisdiction of a Magistrate. The laborers were to be paid at remunerating rates from the public Treasury.

Provision was made in the Bill for compulsory requisitions on the inhabitants of the villages for the supply of materials for stopping breaches—an authority which appeared to be nearly as necessary as that for compelling labor. Such materials were to be taken at once, and receipts given for them, on which payment was to be made from the public Treasury.

On this head, also, he would read certain observations which had been recorded by Mr. Forbes:—

"I take leave to recommend that a Section be added to make it lawful to take materials as well as labor to stop a river-breach. Cocoanut trees, leaves, and straw are as essential as labor. Each individual is naturally desirous that his own should be spared, and those of his neighbor taken; and if the question be asked, it is certain that no one will consent. It is not an exaggeration to say that every minute is important when a breach has been made; and arbitrary as it may appear to seize the goods of individuals, the measure is absolutely necessary, not for the security of the revenue only, but for the preservation of the property of all. '*Salus populi suprema lex*;' and I believe that the legal maxim is unhesitatingly acted upon on occasion of a fire in any large town in England, when houses are 'pulled down, with or without their owners' permission, to arrest the progress of the flames, and prevent a general conflagration."

So, it was also provided in the Penal Code, c. 4, s. 55:—

"Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith, for the purpose of preventing or avoiding other harm to person or property."

And the Illustration was

"A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention and good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to justify A's act, A is not guilty of an offence."

The second object of this Bill, which was deemed of great importance by the Madras Government, was to provide for the enforcement of customary labor for the purpose of irrigation and drainage. The burden of maintaining the great works of irrigation, such as the embankments of the large tanks spread over the country, the embankments of rivers and canals, the anicuts by which the waters of the rivers were arrested and forced into lateral channels, and the channels by which they were conducted to the villages, rested on the Government; and, by the custom of the country, it was, on the other hand, incumbent on the village communities to keep in repair the water-courses leading from those main channels to the fields.

"It has, from time immemorial," said the Madras Government, "been the custom for the ryots of many of the districts in this Presidency, to perform, at their own cost, the petty repairs required to the channels by which their lands are irrigated; and the plan has been so systematized in Tanjore, where irrigation is general, that it is a fixed, known, and admitted rule that, while the Meerassidars clear out and repair all the minor channels by which water is led from the main channels to the fields, they also clear and repair the main channels when the expense of the work does not exceed 2½ per cent. of the revenue derived from the village. This long established custom has wanted only a formal enactment to give it the force of Law; and that formality being refused, the Government are of opinion that, at no distant day, the custom itself will cease. With its cessation, the expense of all the repairs hitherto made by the people must be provided by the State; and the expenditure of this Government in the Department of Public Works will in consequence be much increased. As long as the Public Works Executive was under the Collector, his authority was sufficient, and the general custom of the country was followed

without a question; but when the Executive shall have been transferred to professional agency, and the exercise of the Collector's authority is at an end, the Government are of opinion that, without the aid of the Law, all unpaid labor will cease."

Instead of making the refusal or neglect of the villagers to fulfil their duty in this respect a penal offence, the Bill proposed that, the work being done by other means, the recusants should be liable for the expenses incurred in the execution of it, which, in case of dispute, were to be determined by a Punchayet assembled by order of the Collector through the village or district Moonsiff, as provided by Regulation XII of 1816, in case of disputes regarding the occupying, cultivating, and irrigating of land. In this, the Bill followed the principle of Section LXVIII of the new Conservancy Act, which provided that where the owner of a house neglected or refused to execute any work required of him by the Commissioners for the public good, the Commissioners might themselves have the work executed, and recover the costs from him.

With these remarks, he begged to move that the Bill be read a first time.

The Bill was read a first time.

ACQUISITION OF LANDS FOR PUBLIC WORKS.

MR. ALLEN moved that the Bill "for the acquisition of land for public purposes" be recommitted to a Committee of the whole Council, and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to XXIV were passed as they stood.

MR. PEACOCK said, before Section XXV was proposed, he should move that a new Section be introduced. Section XXIV said—

"When any land is taken under the provisions of this Act, the amount of compensation to be awarded shall include any damage which may be sustained by any of the persons interested therein in respect of any adjoining land held therewith."

That was to say, it should include the kind of compensation which was usually called compensation for severance. If, for instance, a person was entitled to a piece of land, and a portion of it only was taken for a public purpose, he might sustain damage by reason of a portion of what remained in his possession being severed from the remainder of it by the land which was taken, and he might have a right to compensation for such severance in addition to the actual value of what was taken. There might also be the case of damage sustained by reason of being turned out of the land taken. A person might be carrying on a profitable business in a particular house standing on the land, and he might be compelled to quit it, and to remove machinery erected for the purpose of his business. In England, he would be entitled to compensation for any loss which he might sustain in removing his business, in addition to the actual value of the house sold. Several persons might be interested in a house or land taken under this Act. One person might be entitled as a lease-holder for twenty-one years; another as having an interest for life; and a third as having a reversionary interest. But in such a case the only person who would be entitled to compensation for the loss of the business would be the man carrying on that business; and, therefore, it appeared to him that, when land was taken under this Act, and compensation beyond its actual value was assessed for special damage sustained, the award ought to specify what was the amount assessed as the value of the land, and what the amount assessed as compensation for the special damage, and to whom such compensation should be paid. Under the Bill, when the Collector made an award, or directed a reference to arbitration, the land would be vested in the Government, and any dispute regarding the apportionment of the amount awarded would be determined by the Civil Court. The award would be conclusive both with respect to the actual value of the land and to the amount of compensation for special damage sustained. All that the Civil Court would have to do would be to divide the money paid in amongst the several claimants according to their respective interests. To enable the Civil Court to do that, the award ought to specify how much was assessed as the value of the

land, in which the several claimants were to share, and how much as the amount of compensation for special damage, the whole of which was to be paid to the particular individual who had been injured. He therefore proposed that the following new Section be introduced after Section XXIV:—

"If any compensation beyond the value of the land be awarded on account of any damage which may be sustained by any person interested in the land, the award shall specify the value of the land and the amount of such damage separately, and also the name of the person to whom the compensation for damage is to be awarded."

The Section was agreed to.

Sections XXV to XXVIII were passed as they stood.

Section XXIX provided that the principal Civil Court of original jurisdiction might, upon application by petition, and after due investigation, make such order as to the disposal of money deposited as compensation for land as it should deem fit, and that the order should not be subject to appeal; but that the party against whom it might be made, should be at liberty to bring a suit to establish his right at any time within one year from the date of the order.

MR. PEACOCK said this was an old Section; but, on going through the Bill, it appeared to him that probably considerable, certainly some, alteration would be necessary in it. This Act was intended to apply, not only to the Mofussil, but also to the local limits of Her Majesty's Supreme Courts of Judicature. The provision that the party against whom an order was made might bring a regular suit to establish his right, might be all very well as respected the jurisdiction of the Mofussil Courts; but it would not apply to the jurisdiction of the Supreme Courts. When a summary suit was decided in the Mofussil, the losing party, if he wished to get rid of the decision, must file a regular suit. Inasmuch as the application referred to in this Section must be made to the principal Civil Court of original jurisdiction, the applicant must go to the Zillah Judge. The Zillah Judge would have to determine the rights of the parties to the land in order to determine their rights to the money which had been deposited in lieu of the land. His (Mr. Peacock's) own opinion was that it would be much better to leave the rights of the parties to the money in deposit to be determined by the same Court which would have had jurisdiction in determining their rights to the land had the land not been taken. The process which the Bill proposed would force the parties into more litigation than they would otherwise be subjected to. If, for instance, the amount in deposit in lieu of the land was under three hundred Rupees, the applicant, under this Section, must go to the Zillah Judge's Court, and from the decision of that Court no appeal would lie to the Sudder Court, but a regular suit must be instituted if the decision were objected to. In such a case, there would be a regular suit in the Moonsiff's Court to upset the decision of the Zillah Judge. From that Court, a regular appeal would lie to the Zillah Judge; and from the Zillah Judge, a special appeal would lie to the Sudder Court. So that, before the case was finally determined, there would be four processes to go through—namely, the application to the Zillah Court by petition, the regular suit, an appeal to the Zillah Judge from the decision in that suit, and an appeal to the Sudder Court from the Zillah Judge; whereas, if the ordinary procedure were followed from the beginning, there would be but three steps to be taken—namely, a regular suit, a regular appeal, and a special appeal.

If, however, the Council should think that it would be better to let the Section stand as it was as regarded the Mofussil, an alteration in the Section would be necessary with respect to the jurisdiction of the Supreme Courts. The Supreme Court would make an order in a summary manner. There would be no appeal from that order. But, under the Section as it stood, the party against whom the order was made might bring a regular suit to establish his right. To what Court was that regular suit to lie? To the Supreme Court? It appeared to him that such a course would not be advisable; and that, in all cases within the jurisdiction of the Supreme Courts, if the amount of compensation awarded were above five hundred Rupees, the parties should proceed either by Motion or Petition in Court; and that, if the

amount were under five hundred Rupees, the Small Cause Courts should be allowed to determine summarily the rights of the parties.

He should, therefore, move that Section XXIX be omitted, in order that the following might be substituted for it :—

"The order shall be obtained in the Court which would have had jurisdiction in respect of the land taken."

If this were adopted, it would be necessary to adopt the amendment he had indicated with respect to the Supreme Courts.

MR. CURRIE said, for his own part, he had no objection to the course proposed by the Honorable and learned Member in regard to the Mofussil; but he felt a doubt as to the suggestion respecting the Small Cause Courts. Those Courts had no jurisdiction in cases of title to lands. Would it be right to give them jurisdiction in cases in which, though the immediate subject of dispute would be the right to the money in deposit, the virtual question involved would be the title to the land for which the money was substituted?

MR. PEACOCK said, he did not know that there was any great objection to giving them the jurisdiction proposed.

The amount on which they would adjudicate would be very small—under five hundred Rupees; and he thought that it would be better to leave it to them to determine claims in such cases, than to drive the parties into the Supreme Courts. He knew that the late Chief Justice (Sir Lawrence Peel,) was willing to confer on the Small Cause Court a jurisdiction in partition suits where the amount in question did not exceed five hundred Rupees.

After some conversation, MR. PEACOCK moved that the words he had proposed in substitution of Section XXIX be added to Section XXVIII.

MR. ALLEN said, the object in introducing Section XXIX was to obviate stamp dues, and secure a summary adjudication of claims without much expense. His impression was that, in a very large majority of cases, the summary orders made by the local principal Civil Courts of original jurisdiction would be sufficient; and such orders could be obtained without payment of stamp fees, or the costs of a regular suit. At the same time, if it was the wish of Honorable Members that the first step should be a regular suit, he would not divide the Council upon the question.

MR. PEACOCK'S motion was then put and carried.

Section XXIX was put and negatived.

MR. PEACOCK moved that the following Section be introduced before Section XXX:—

"If the land taken be within the local limits of any of Her Majesty's Supreme Courts of Judicature, and the amount of compensation awarded do not exceed five hundred Rupees, the order may be made by the Court of Small Causes."

Agreed to.

The remaining Sections of the Bill, with the Preamble and Title, were passed as they stood.

The Council resumed its sitting.

UNCOVENANTED SERVANTS (FORT ST. GEORGE.)

MR. ELIOTT moved that the Council resolve itself into a Committee on the Bill "for the more extensive employment of Uncovenanted Agency in the Revenue and Judicial Departments in the Presidency of Fort St. George;" and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

Agreed to.

The Bill passed through Committee without amendment; and the Council having resumed its sitting, both the Bills were reported.

NAWAB OF THE CARNATIC.

MR. ELIOTT moved that the Report of the Select Committee on the Bill "for repealing Act I of 1844" be adopted. As the Report was very short, he begged permission to read it:—

"We, the Select Committee on the Bill "for repealing Act I of 1844," have the honor to report as follows.

"Petition of Govindar Doss, Soucar and Merchant of Madras, dated 26th December, 1856.

"Petition of Soojun Mool Lalah, Soucar of Madras, dated 27th idem.

"We have had under consideration the Petitions and papers noted in the margin.

"We find that, since the publication of this Bill, the Supreme Court of Judicature at Madras

"From Government of Fort Saint George, dated 18th February, 1857, and enclosures.

"From Ditto, dated 24th idem, and enclosures.

has decided that Act I of 1844 was a personal Statute, which upon the death of the late Nawab of the Carnatic ceased to have any operation. It having thus been pronounced judicially that the said Act is already extinct, it appears unnecessary to repeal it formally.

"On the supposition that a Law was necessary to repeal the Act, it was intended by the Bill for that purpose to make an exception as to all contracts made, liabilities incurred, and acts done, prior to the repeal, by persons privileged under the provisions of the Act, in accordance with the opinion of the Government of India that great injustice would be done if the family of the Nawab were now made liable for debts contracted under the law. But as, by the decision of the Supreme Court, it appears that the protection of the persons referred to was confined by the law to the life-time of the Nawab, it would be virtually to give them a new privilege, *expost facto*, to repeal the Act with an express provision to the same effect as the intended reservation."

The Motion was carried.

ACQUISITION OF LANDS FOR PUBLIC WORKS.

MR. ALLEN gave notice that, on Saturday next, he would move that the Bill "for the acquisition of land for public purposes" be read a third time and passed.

UNCOVENANTED SERVANTS (FORT ST. GEORGE.)

Also that, on the same day, he would, in the absence of Mr. Eliott, move that the Bill "for the more extensive employment of Uncovenanted Agency in the Revenue and Judicial Departments in the Presidency of Fort St. George" be read a third time and passed.

The Council adjourned.

Saturday, April 25, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	C. Allen, Esq.,
Hon. Major General J. Low.	P. W. LeGeyt, Esq.,
Hon. J. P. Grant,	E. Currie, Esq.
Hon. B. Peacock,	and
	Hon. Sir A. W. Buller,

CATTLE TRESPASS.

THE CLERK presented a Petition from Mr. C. F. Chamier, a Member of the Civil Service on the Madras Establishment. The Petitioner forwarded a draft enactment relating to Trespasses by Cattle, as containing provisions better suited to the Presidency of Madras than those of Act III of 1857.

MR. CURRIE said, it appeared to him that it would have been better if the Memorialist had communicated his suggestions to the Select Committee while the Bill was under their consideration, or, failing that, had waited to see how Act III of 1857 did work in the Presidency of Madras. The Act had not been brought into operation yet; and it seemed premature, before it was brought into operation, to propose a new Law on the same subject for the Madras Presidency only.

BRIBERY (BOMBAY).

THE CLERK reported that he had received a communication from the Officiating Under Secretary to the Government of India in the Home Department forwarding for consideration, in connection with the state of the Law regarding Bribery, a copy of a correspondence with the Government of Bombay and of an Extract of a Despatch from the Honorable the Court of Directors relative to the case of a Patell in the Mahee Kanta who entered into a corrupt arrangement with two persons in Bombay (one of whom was a Clerk in the Political Department) for the purpose of obtaining redress from the British Government against the acts of his own Government.

MR. PEACOCK moved that these papers be printed and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

ACQUISITION OF LANDS FOR PUBLIC WORKS.

MR. ALLEN moved that the Bill "for the acquisition of land for public purposes" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

UNCOVENANTED SERVANTS (FORT ST. GEORGE.)

MR. ALLEN moved that the Bill "for the more extensive employment of Uncovenanted Agency in the Revenue and Judicial Departments in the Presidency of Fort St. George" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

SONTHAL DISTRICTS.

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill "to amend Act XXXVII of 1855;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and was reported.

MESSENGER.

MR. ALLEN moved that Mr. Peacock be requested to take the Bill "for the acquisition of land for public purposes," and the Bill "for the more extensive employment of Uncovenanted Agency in the Revenue and Judicial Departments in the Presidency of Fort St. George," to the Governor-General for his assent.

Agreed to.

SMALL CAUSE COURTS.

MR. LEGEYT moved that a communication which he had received from the Government of Bombay be laid upon the table and referred to the Select Committee on the Bill "to amend Act IX of 1850."

Agreed to.

CRIMINAL PROCEDURE (BENGAL).

MR. PEACOCK moved that the Petition of British Subjects, presented on the 14th ultimo, against the Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in Bengal, for simplifying the procedure thereof, and for investing other Courts with Criminal Jurisdiction," be referred to the Select Committee on the Bill.

Agreed to.

The Council adjourned.

Saturday, May 2, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.,
Hon. Major General J. Low,	E. Currie, Esq., and
Hon. J. P. Grant,	Hon. Sir A. W. Buller.
Hon. B. Peacock,	

CARRIAGE AND HORSE TAX.

THE CLERK presented a Petition of Mr. A. M. Murdoch, an Undertaker in Calcutta, praying that the exemption contained in Section XIV Act XXVIII of 1856 may be extended to conveyances used by him.

BOMBAY UNIVERSITY.

MR. LEGEYT moved that a Bill "to establish and incorporate an University at Madras" be now read a first time.

The Bill was read a first time.

COMPULSORY LABOR (MADRAS).

MR. CURRIE moved that the Bill "to make lawful compulsory labor for the prevention of mischief by inundation, and to provide for the enforcement of customary labor to certain works of irrigation in the Presidency of Fort St. George" be now read a second time.

The motion was carried, and the Bill read a second time.

SONTHAL DISTRICTS.

MR. CURRIE moved that the Bill "to amend Act XXXVII of 1855" (to remove from the operation of the general Laws and Regulations certain Districts inhabited by Sonthals and others, and to place the same under the superintendence of an Officer to be specially appointed for that purpose) be read a third time and passed.

The motion was carried, and the Bill read a third time.

UNDER-TENURES.

MR. CURRIE moved that a correspondence between himself and the

Bengal Government on the subject of Under-tenures be laid upon the table and referred to the Select Committee on the Bill "to improve the law relating to sales of land for arrears of Revenue in the Bengal Presidency."

Agreed to.

The Council adjourned.

Saturday, May 9, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	Hon. B. Peacock,
Hon. Major General J. Low,	P. W. LeGeyt, Esq.
Hon. J. P. Grant,	E. Currie, Esq., and Hon. Sir A. W. Buller.

THE CLERK presented the following Petitions:—

CRIMINAL PROCEDURE (BENGAL.)

A Petition of the Bengal Chamber of Commerce against so much of the Bill "for extending the Jurisdiction of the Courts of Criminal Judicature of the East India Company in Bengal, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction" as proposes to entrust powers of imprisonment to Native Officers in the two lower Courts: and also praying that such amendments may be introduced into the Bill as will ensure to the two higher Courts competent and independent Judges, before the jurisdiction of those Courts is extended.

MR. PEACOCK moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

CIVIL PROCEDURE (BOMBAY.)

A Petition of Inhabitants of Surat praying that the Clauses of the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bombay" concerning suits against Officers of Government, may be omitted; and that such suits may be placed on the same footing as suits against private persons.

MR. LEGEYT moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

PIRATICAL VESSELS (STRAITS' SETTLEMENT.)

MR. PEACOCK presented the Report of the Select Committee on the Bill "to authorize the arrest and detention, within the Ports of the Settlement of Prince of Wales' Island, Singapore, and Malacca, of Junks or Native Vessels suspected to be piratical."

PORT-DUES (MOULMEIN, RANGOON &c.)

MR. CURRIE moved that a Bill "for the levy of Port-dues in the Ports of Moulmein, Rangoon, Dalhousie, Akyab, and Chittagong" be now read a first time.

He said, when he lately introduced the Bill for levying port-dues in the Port of Calcutta, he mentioned that there were other ports under the Government of Bengal at which port-dues were levied, and that he was not then in possession of the information necessary to enable him to include them in that Bill, or to frame another Bill concerning them. He had since been furnished with information respecting the ports of Akyab and Chittagong; but it had appeared to him that the other ports on the Eastern side of the Bay of Bengal—Moulmein, Rangoon, and Bassein or Dalhousie—should be included in any Bill that might be framed for Akyab and Chittagong. The Commissioner of Pegu had furnished full information respecting the port of Rangoon, and recommended that the port-due now levied there—namely, four annas per ton—should be raised to six annas. Calculated on the quantity of shipping which now frequented Rangoon, the Commissioner shewed that even this enhanced rate would not be sufficient to cover the expenses of the port. He was, however, of opinion that no higher tax should be levied; and he (Mr. Currie) had taken the rate which that Officer recommended should not be exceeded, as the maximum rate to be levied under the Bill. The Commissioner of Pegu proposed that the Harbour Act should not, at present, be extended to the new port of Dalhousie, and

that the existing duty there of four annas per ton should continue to be levied. But it should be remembered that, after the 16th of August next, no port-due at all could be levied at any port, whether the Harbour Act was extended to it or not, without the authority of the Legislature; and he (Mr. Currie) had, therefore, thought it advisable to include the port of Dalhousie in this Bill. Of course, if it should appear proper to the Council, or to the Select Committee to whom the Bill might be referred, to forego the levy of duties altogether until the requirements of the new port, and the probable amount of shipping, should be ascertained, the necessary amendment could easily be made; but if that port had been omitted from the original Bill, and it were afterwards thought necessary to include it, it would not have been so easy to rectify the omission.

For Akyab and Chittagong, he had taken the rates which at present prevailed—namely, two-and-a-half annas and four-and-a-half annas. At both ports, the receipts were somewhat in excess of the expenditure; but the rates were, probably, not too high. The Commissioner of Arracan stated that the future expenses of that port would probably exceed the income.

In apology for bringing in a Bill which was based on information confessedly in some respects defective, he thought it necessary only to say that it appeared to him desirable that there should be no further delay in passing the supplemental Acts required by Section XLI of the Harbour Act. These supplemental Acts ought to have been passed within twelve months after the passing of the Harbour Act, and nearly two years had now elapsed. From Moulmein, no communication whatever had been received since the Harbour Act was passed. He thought that the surest way of getting what was wanted, was the introduction of a Bill framed upon such imperfect information as had been obtained, which would impose a sort of necessity on the parties interested to communicate their views on the subject, within a certain definite period.

If the Bill should be read a second time, he would ask permission to refer it to the same Select Committee which had been appointed to consider the Calcutta Port-dues Bill, and it could then be determined whether the two Bills should be consolidated into one, or passed as separate measures. The provisions of this Bill were not entirely identical with the provisions of the Calcutta Bill; and he thought that they would probably be better as separate enactments.

The Bill was read a first time.

MADRAS UNIVERSITY.

MR. LEGEYT moved the second reading of the Bill "to establish and incorporate an University at Madras."

THE CHIEF JUSTICE said, he rose to make only one observation upon Section VI of the Bill. He observed that, both in this Bill and in the Bill intended for Bombay, the Governments of those two Presidencies, or the framers of the drafts, had, in appointing ex-officio Fellows, proceeded upon a principle different from that which had been adopted in the Bill for Calcutta with the sanction of the Governor-General in Council. By the Bill for Calcutta, the only ex-officio Fellows appointed were the Lieutenant-Governor of Bengal, the Lieutenant-Governor of the North Western Provinces, the Chief Justice, the Members of the Supreme Council, and the Bishop of Calcutta, all for the time being. In the Bill for Madras, he observed that the present Chief Justice of that Presidency was appointed first Vice-Chancellor of the Madras University, but that no provision was made for the Chief Justice for the time being continuing to be an ex-officio Fellow. The ex-officio Fellows whom the Bill did appoint, were the Bishop of Madras for the time being, the Commander-in-Chief of the Forces in Madras for the time being, the Members of the Council of Madras for the time being—and then followed a great number of other persons, some of them public Officers, and some Heads of private Institutions. There were the Secretary to Government in the Departments of Revenue and Public Works, the Secretary to Government in the Military Department, the Director of Public Instruction, the Principal of the Presidency College, the President of the Medical College, the Principal of the Doveton College, the Principal of the Government Normal School, and the President

of Patcheapah's Institution, all for the time being That last Institution, he apprehended, and the Doveton College, would be rather in the nature of affiliated Institutions—Institutions which would become connected with the University on their own application and on the recommendation of two Members of the Senate. It did not seem to him very expedient to make the Heads of such Institutions for the time being ex-officio Members of the Senate for all time to come. Because, though he trusted such an event was far from probable, yet it was possible that such a considerable difference of opinion regarding the course of instruction proper to be adopted might at some time arise as to induce them to withdraw from the University altogether; notwithstanding which, they would, by the Act establishing and incorporating the University, be ex-officio Members of the Senate for all time to come, or at least until a new Act of the Legislature was passed. He, therefore, thought it desirable that the Bills for Madras and Bombay should correspond in this respect with the Bill for Calcutta.

MR. LEGEYT said he quite agreed in these observations, and had already forwarded a communication to the Government of Bombay, and sent a copy of it to the Government of Madras, embodying very much the same arguments, and suggesting that the selection of ex-officio Members should be only from amongst public Officers. He had no doubt that he would receive in a very few days communications from both Governments expressing their concurrence in the views he had submitted, and the desired amendments in the Bill might be made in Select Committee.

The Bill was then read a second time.

ACQUISITION OF LANDS FOR PUBLIC WORKS.

The following Messages from the Governor-General were brought by Mr. Peacock and read:—

MESSAGE No. 100.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 25th April 1857, entitled "A Bill for the acquisition of land for public purposes."

By order of the Right Honorable the Governor-General.

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 1st May 1857.

UNCOVENANTED SERVANTS (FORT ST. GEORGE).

MESSAGE No. 101.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 25th April 1857, entitled "A Bill for the more extensive employment of Uncovenanted Agency in the Revenue and Judicial Departments in the Presidency of Fort St. George."

By order of the Right Honorable the Governor-General.

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 1st May 1857.

PATENTS FOR INVENTIONS.

MR. PEACOCK said, the Honorable Court of Directors had signified to the Governor-General in Council that they had disallowed Act VI of 1856, for the granting of exclusive privileges to Inventors. It therefore became necessary for the Council, under Section XLIV of the Charter Act, to take measures forthwith to repeal the Law. The 44th Section of the Charter Act said:—

"In case the said Court of Directors, under such control as by this Act is provided, shall signify to the said Governor-General in Council their disallowance of any Laws or Regulations by the said Governor-General in Council made, then and in every such case, upon receipt by the said Governor-General in Council of notice of such disallowance, the said Governor-General in Council shall forthwith repeal all Laws and Regulations so disallowed."

He therefore moved that the Standing Orders of the Council be suspended, that he might be enabled to bring in and carry through the different stages at once a Bill "to repeal Act VI of 1856."

MR. GRANT seconded the motion, which was carried.

MR. PEACOCK then moved the first reading of a Bill "to repeal Act VI of 1856." He said, by the Charter Act of 3 and 4 William IV, which conferred powers of legislation upon the Governor-General of India in Council, it was provided that the Governor-General in Council should not have power to pass any Act which should affect any prerogative of the Crown. By the 16 and 17 Vict. c. 95, it was enacted that no Law shall be invalid by reason only that the same affects any prerogative of the Crown, provided the same shall have received the previous sanction of the Crown. The Select Committee who prepared the Bill for granting exclusive privileges to Inventors in India, having taken the question into consideration, came to the conclusion that the Bill, as they had framed it, did not affect any prerogative of the Crown, and, upon their recommendation, the Bill was passed without having been sent home for the sanction of the Crown. As one of the Committee, he thought at the time that, if the Act did not affect the prerogative of the Crown, it would be better not to send it home for sanction—not because he wished that the Council should run any unnecessary risk of exceeding its powers, or that it should assert a right to pass such an Act without the previous sanction of the Crown; but because he thought that, as the Act was introducing into India for the first time the right to grant exclusive privileges to Inventors, it would be necessary for the Council to watch the mode in which it worked, and to have the power, if it saw any inconvenience arise from any of its provisions, to amend it at once without making a reference home. If the Council was unable to pass such an Act without the previous sanction of the Crown, it followed that it would be unable without the sanction of the Crown to amend any of its provisions after it had been passed with such sanction. The Select Committee, therefore, having very carefully considered the question, and having come to the conclusion that the Act did not affect any prerogative of the Crown, recommended the Council to pass the Act without sending it home for the previous sanction of Her Majesty. When the Act went home, the opinion of Her Majesty's Law Officers was taken on the question whether it was within the competency of this Council to pass it without the sanction of the Crown; and Her Majesty's Law Officers, proceeding on the assumption that the prerogative of the Crown to grant Letters Patent extended to India, gave it as their opinion that the Act did affect that prerogative, and that therefore it was beyond the competency of this Council to pass it without the Royal sanction. It was unnecessary for him to combat that opinion, or to enter into any argument upon the point, because the Honorable Court of Directors, guided by that opinion, had disallowed the Act, and had notified such disallowance to the Governor-General in Council. All that remained for the Council to do was to take measures to repeal the Act without delay.

As, however, the Honorable Court's Despatch entered into the subject at length, and the Council had not yet had an opportunity of seeing it, he would ask permission to read it.

He was glad to say that it was not on the ground of any objection to the Act itself on the part of the Court or of the Law Officers of the Crown, but simply on the dry legal question relating to the prerogative of the Crown, that the Act had been disallowed. He believed that the Court of Directors were still anxious that an Act should be passed under which Inventors might obtain exclusive privileges. The Law Officers of the Crown suggested that the Act should be reconsidered, and that a Bill in substitution of it should be sent home for the sanction of Her Majesty, containing a Clause enacting that privileges which had already been granted under it should be held to be as valid as if the Act had received the previous sanction of the Crown.

The Despatch of the Court was dated the 18th of March 1857, and was as follows:—

"Para. 1. In continuation of our Despatch of the 2nd January (No. 1), 1357, we herewith transmit to you the joint opinion of the Law Officers of the Crown and of the East India Company 'as to the mode in which it is now necessary to proceed in order to legalize what' the Government of India may have done under Act VI of 1856, in regard to granting Patents, and to enable them in this respect to act legally for the future;'—and in so doing, we cannot but express our regret that the Legislative Council should have taken

the step of passing an Act upon the subject of Patents under circumstances which have rendered its early repeal a matter of necessity.

"2. The proceedings before the Council at the time of passing the Act shew that discussion respecting the power of the Government of India to legislate in regard to Patents for the protection of inventions and discoveries had been carried on from the year 1835—that is, from a date shortly after the enactment of the Act 3 and 4 William IV. c. 85, by the 43rd Section of which extended powers of legislation were conferred upon the Governor-General in Council. The Law Officers of the Crown and of the East India Company had been repeatedly consulted, and the majority of opinions were adverse to the competency of the local Legislature to legislate upon the subject. Under these circumstances, it was suggested in a joint Opinion, dated 24th May 1850, subscribed by Her Majesty's Attorney General and Solicitor General, and by the Company's Standing Counsel, 'either that a Law should be passed in India confined to the confirmation of any Letters Patent which may be granted by the Crown for India, and to provisions for making the same effectual, or that the aid of the Imperial Legislature should be sought for either now, or on any renewal which might be granted of the East India Company's Government.' The Law Officers were in favor of the latter course.

"3. An opportunity was accordingly taken in the year 1853, of introducing into the Act 16 and 17 Vic. c. 95, a Clause empowering the Governor-General in Council to legislate in matters affecting the Prerogative of the Crown, provided that the Law or Regulation to be passed by the local Legislature shall have received the previous sanction of the Crown, signified under the Royal Sign Manual of Her Majesty, countersigned by the President of the Board of Commissioners for the Affairs of India; and the Government of India cannot but have been aware that the insertion of this Clause was the result of the previous discussion in regard to the respective powers of the Crown and of the Governor-General in Council to provide, by means of Patents, for the protection of Inventions.

"4. Provision was thus made, by the Law of 1853, for satisfactory legislation in India upon the subject, and for securing, under the joint action of the Crown and of the Government of India, the rights of Patentees, by avoiding all questions as to the validity of their Patents which might otherwise have been raised in the Courts of Law on the ground of the incompetency or legal inability of the authority granting the Patent. A draft Act 'for granting exclusive privileges to Inventors' was, however, shortly after laid before the Legislative Council, and passed on the 28th February 1856, without the sanction of the Crown having been previously obtained.

"5. It was considered by the Legislative Council, on the advice of the Select Committee to whom the Bill had been referred, that the provisions of the Act would not affect any Royal Prerogative, even on the assumption that the Prerogative of the Crown to grant Patents extended to India. In order, however, to avoid any possible case of conflict or collision, it was provided by the 35th Section that—'Nothing in this Act shall affect the Prerogative of the Crown, or interfere with or affect any letters Patent now or hereafter to be granted by the Crown.'

"The Law Officers of the Crown, proceeding on the same assumption, have given it as their opinion that 'it was not competent to the Legislative Council to pass the Act VI of 1856, without previously obtaining the sanction of the Crown; and that the omission is in no way cured or affected by Section XXXV, or the interference removed by a declaration that the usurped right is exercised subject to any similar exercise of its Prerogative by the Crown.' In passing Act VI of 1856, the Legislative Council departed from the course specially indicated for its guidance by the Imperial Legislature, and adopted one which, if within the competency of the Council at all, was as much so at the commencement, as at the close, of twenty years' discussion upon the subject.

"6. Under these circumstances, it only remains for us formally to disallow Act VI of 1856. We disallow it, and direct that you will take measures for its immediate repeal."

It was upon this Clause of the Despatch that he now proposed to repeal the Act.

His own opinion was that Section XXXV of the Act did sufficiently provide against any interference with the prerogative of the Crown. The only case in which, as it appeared to him, such an Act as the present could affect the prerogative of the Crown was, if one person should obtain from the Crown a Patent for an invention extending to India, and another should obtain from the Government here an exclusive privilege under this Act. In such a case, there would be two persons claiming an exclusive privilege in respect of the same Invention, and there would be a conflict of rights. To avoid such a conflict, and to prevent any interference with the prerogative of the Crown, the Select Committee had inserted in the Act Section XXXV. The Section said—

"Nothing in this Act shall affect the prerogative of the Crown, or interfere with, or affect any Letters Patent now or hereafter to be granted by the Crown."

So that if the Crown should think it right to exercise the prerogative of granting a Patent in India, the exclusive privilege granted by the Government here would give way, and the Pa-

tent of the Crown would be of as much force as if the exclusive privilege had never been obtained. He mentioned this with the view, not of disputing the Opinion given by the Law Officers of the Crown, but of explaining to the Council, with reference to the Court's Despatch, why the Select Committee had recommended that the Act should not be sent home for sanction before it was passed.

The Despatch proceeded as follows:

"We desire that, for the information of the Legislative Council, and with a view to the protection of the rights of the Patentees to whom you have already granted Patents, you will lay before the Council a copy of the Opinion herewith transmitted. We also transmit, for the same purpose, copies of correspondence noted in the margin relative to a reference made to us on the subject of Act VI of 1856 by the Directors of the East India Railway Company."

As the Opinion and correspondence to which he had referred, together with the Despatch itself, would be laid before the Council in due course, and they were of some length, it was unnecessary for him to detain the Council by reading them now. But he would state shortly what the Law Officers had recommended. They said:—

"We are of opinion that the advisable course will be that an Act should be passed by the Indian Legislature, with the previous sanction of the Crown, which should recite that the Act No. VI of 1856 had been passed without the previous sanction of the Crown, and that a question had been raised as to the competency of the Indian Legislature to pass it; and should then repeal the Act No. VI of 1856, and afterwards proceed to re-enact its provisions, but excluding the 35th Clause. If any Patents have been granted under the Act No. VI of 1856, a Clause should be added to provide that every thing done under that Act before the passing of the new Act, shall be of the same force and effect as if previously to the passing thereof the same had received the sanction of the Crown.

"In framing the new Act to be submitted for the sanction of the Crown, the provisions of the former Act will doubtless receive reconsideration. In doing this we think that (amongst other points) it will deserve to be considered whether Clause XVIII, which enacts that an invention is to be deemed a new invention, if it shall not have been *publicly* used in India, or been made *publicly known* there by means of a printed publication, is not too largely worded. Also whether the enactment of Clause XXII, which restricts the defence of want of novelty to a Defendant who has publicly or actively used the invention in India, may not temporarily (that is, until the Patent be set aside) give to the holder of a Patent fraudulently taken out, all the profits of a valid Patent."

These were subjects which would receive consideration before the Act in substitution of Act VI of 1856 was sent home for sanction. All he proposed now was to introduce a Bill to repeal forthwith Act VI of 1856, which the Court of Directors had disallowed, and which it was therefore the duty of the Council to repeal without delay. It would not be right to follow in this case the course prescribed by the Standing Orders, and publish the Bill for three months before passing it. The Act having been disallowed by the Court of Directors, the Council was bound, under the provisions of the Charter by which it was constituted, to repeal it forthwith. As soon as the papers now in his hand were fully before the Council, which he hoped they would be before their next Meeting, it was his intention to move that they should be referred to the Select Committee who had framed Act VI of 1856, in order that they might consider whether there was any necessity for altering or modifying the Act. He would then suggest that the Select Committee should prepare a Bill in substitution of the Act, and that it should be read a first and second time, and settled in a Committee of the whole Council, and then sent home for the sanction of the Crown. It appeared to him that that would be the most advisable course to be adopted. But intermediately, he thought that the Act VI of 1856 should be repealed forthwith. He therefore now proposed a Bill to repeal it, which, as it was very short, he would read to the Council:—

A Bill to repeal Act VI of 1856.

Preamble. Whereas Her Majesty's Law Officers, proceeding upon the assumption that the Prerogative of the Crown to grant Letters Patent for Inventions extends to India, have given it as their opinion that the Legislative Council of India was not competent to pass Act VI of 1856 without previously obtaining the sanction of the Crown; and the Court of Directors of the East India Company have, in pursuance of the power vested in them by law, disallowed Act VI of 1856, and have signified to the

Governor-General of India in Council their disallowance thereof. It is enacted as follows:—

Act VI of 1856 is hereby repealed.

He had thought it right to state in the Preamble that Her Majesty's Law Officers had given that opinion, because the Court of Directors stated the opinion to be their reason for disallowing the Act. otherwise, it might appear that the disallowance had proceeded either on the principle that exclusive privileges ought not to be granted to Inventors in India, or on the ground that there were provisions in the Act of which the Home Authorities did not approve—which was not the fact.

MR. GRANT said, before the motion for the first reading was put, he would ask the Honorable and learned Mover of the Bill if it would not be better to omit all that part of the Preamble which explained the reason of the disallowance of Act VI of 1856 by the Honorable Court of Directors. It might perhaps be proper to insert such an explanation in the Bill which the Honorable and learned Member intended to introduce to supply the place of that Act; but he did not think that the Council ought to put forward the opinion of the Law Officers of the Crown as a reason for repealing the existing Law. That, in fact, was not the real reason for repealing the existing Law. The real reason was that the existing Law had been disallowed by the Court of Directors. The Council, in this case, was acting in only a ministerial capacity; and he thought it would be better to omit from the Preamble of the Bill the reasons of the disallowance.

THE CHIEF JUSTICE said, he did not think that the Preamble, as worded, stated the opinion of Her Majesty's Law Officers to be the reason why the Council repealed Act VI of 1856. It only recited that opinion as a reason why the Court had disallowed the Act. If that were a fit recital to insert in any Act passed by the Council, it appeared to him that it was more fit to insert it in this Bill than in the Bill which was to be substituted for Act VI of 1856.

MR. PEACOCK said, his only object in introducing the first part of the Preamble was to explain to the Public at large that the reason why the Court of Directors had disallowed Act VI of 1856 was, not that they objected to a Patent Law for India, but merely because Her Majesty's Law Officers had given it as their opinion that the Act affected the prerogative of the Crown.

The Bill which would be introduced in lieu of Act VI of 1856 would be brought in just as if the present Act had never been passed, except that the delay of publishing it for three months would not take place. His own opinion was that it should, to a great extent at least, follow the provisions of the existing Law. The two Clauses which were referred to by the Law Officers of the Crown, would of course receive full consideration. But whatever further consideration those and other Clauses might receive, it was incumbent on the Council to repeal the Act now; and in the Bill which he had prepared for that purpose, he had thought it right to frame the Preamble so that the Public should see that the Council's reason for repealing the Act was the disallowance by the Court, and that the Court's reason for disallowing it was the opinion of Her Majesty's Law Officers that it interfered with the prerogative of the Crown. But he had no particular wish to retain that part of the Preamble which referred to the opinion of Her Majesty's Law Officers; and if Honorable Members thought that it should be struck out, the amendment might be made in Committee of the whole Council.

The motion for the first reading was then put and carried, and the Bill read a first time.

MR. PEACOCK moved that the Bill be read a second time.

The Motion was carried, and the Bill read a second time.

MR. PEACOCK said, his next step was to move that the Council resolve itself into a Committee on the Bill; but if any Honorable Member desired time to consider the recitals in the Preamble, he had not the slightest objection to postpone his Motion until the next Meeting of the Council.

MR. GRANT said, he was entirely willing to go into Committee on the Bill at once; but he should take this opportunity of stating more fully than he had done before, his reasons for thinking that the Preamble should recite nothing more than that Act VI of

1856 had been disallowed by the Court of Directors. This was the first time that an Act passed by the present Legislative Council had been disallowed by the Court, and the first time that the Council—under the Charter Act which required it to repeal any Act which had been disallowed by the Court—had acted accordingly simply in a ministerial capacity. In what it was now about to do, therefore, it was about to constitute a precedent; and he thought that, in this and in all future cases, the better course would be simply to state in the Preamble what was the sole reason upon which the Council proceeded—and that was the disallowance of the existing Law by the Honorable Court. Otherwise, supposing that the Court should, in some future case, disapprove of an Act, not, as in the present instance, because of a purely technical objection, but on some substantial grounds affecting the merits of the Law; and that, in their letter of disapproval, they should enter at length upon their reasons. If, in such a case, the Council were to attempt to give in the Preamble of the repealing Act an explanation of the reasons of the disapproval, the Home Authorities might think that the Preamble did not quite correctly, or sufficiently fully state their reasons for disallowing the Act, and might have ground to complain that the Council had not done them justice. It appeared to him that it would be much safer to adopt it now as a principle, establishing a precedent which he had no doubt would be conformed to in future, that whenever an Act is disallowed by the Court, the Preamble of the Bill repealing that Act should simply state the actual reason why the Act is repealed, —which is, that it has been disallowed by the Court of Directors.

MR. PEACOCK said, he thought the Honorable Member had shewn strong reasons in support of his view, and he was quite willing to make the amendment suggested.

He should now move that the Council resolve itself into a Committee upon the Bill.

Agreed to.

Section 1 was passed as it stood.

The Preamble being proposed—

MR. PEACOCK moved that the words "Her Majesty's Law Officers, proceeding upon the assumption that the Prerogative of the Crown to grant Letters Patent for inventions extends to India, have given it as their opinion that the Legislative Council of India was not competent to pass Act VI of 1856 without previously obtaining the sanction of the Crown; and," after the word "Whereas" in the first line, be omitted.

The Motion was agreed to, and the Preamble then passed.

The Title was passed as it stood.

MR. PEACOCK moved that the Bill be now read a third time, and passed.

The Motion was carried, and the Bill read a third time.

MR. PEACOCK moved that Mr. Grant be requested to take the above Bill to the Governor-General for his assent.

Agreed to.

SONTHAL DISTRICTS.

MR. CURRIE moved that Mr. Grant be requested to take the Bill "to amend Act XXXVII of 1855" to the Governor-General for his assent.

Agreed to.

THE OFFENCE OF SACRILEGE (PENAL CODE.)

MR LEGEYT moved that a letter received by him from the Secretary to the Government of Bombay, forwarding a communication from the Lord Bishop of Bombay remarking on the provisions in the Penal Code against the offence of Sacrilege, be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

DACOITY (PENAL CODE.)

MR. CURRIE moved that a communication received by him from the Government of Bengal, forwarding an extract of a Report from the Commissioner for the Suppression of Dacoity urging the inefficacy of term-punishments in the case of professional offenders, be laid upon the table and referred to the same Committee.

Agreed to.

LATTWALS AND DACOITS (PENAL CODE.)

MR. CURRIE moved that a communication received by him from the Go-

vernment of Bengal, regarding the career of a notorious Dacoit named Sreemunto Ghose by whom the professions of Lattyal and Dacoit were jointly followed, be laid upon the table and referred to the same Committee.

Agreed to.

MUNICIPAL ASSESSMENT (SUBURBS OF CALCUTTA AND HOWRAH).

MR. CURRIE moved that Mr. Grant and Mr. LeGeyt be substituted for Mr. Eliott and Mr. Allen as Members of the Select Committee on the Bill "for raising funds for making and repairing roads in the suburbs of Calcutta and the Station of Howrah."

Agreed to.

COMPULSORY LABOR IN MADRAS.

MR. CURRIE moved that the Bill "to make lawful compulsory labor for the prevention of mischief by inundation, and to provide for the enforcement of customary labor to certain works of irrigation in the Presidency of Fort St. George" be referred to a Select Committee consisting of Mr. Grant, Mr. LeGeyt, and Mr. Currie.

Agreed to.

PIRATICAL VESSELS (STRAITS SETTLEMENT.)

MR. PEACOCK gave notice that he would, on Saturday the 16th Instant, move for a Committee of the whole Council on the Bill "to authorize the arrest and detention, within the Ports of the Settlement of Prince of Wales' Island, Singapore, and Malacca, of Junks or Native Vessels suspected to be piratical."

The Council adjourned.

Saturday, May 16, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.
Hon. Major General J. Low,	E. Currie, Esq. and
Hon. J. P. Grant,	Hon. Sir A. W. Buller.
Hon. B. Peacock,	

CIVIL PROCEDURE (BOMBAY.)

THE CLERK presented a Petition of inhabitants of Broach, praying that the Clauses of the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bombay" concerning suits against Officers of Government may be omitted; and that such suits may be placed on the same footing as suits against private individuals.

MR. LEGEYT moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

LEGISLATIVE COUNCIL.

THE CLERK reported to the Council that he had received a communication from the Secretary to the Government of India in the Home Department, forwarding copies of two Circulars to the Local Governments and other authorities, with a request that, with the permission of the Council, a narrative of the course of Legislation during the official year 1856-57 may be drawn up and forwarded to that Department for publication with the other Reports.

MR. GRANT moved that the above communication be referred to the Standing Orders Committee.

Agreed to.

PATENTS FOR INVENTIONS.

THE CLERK also reported to the Council that he had received a communication from the Officiating Under-Secretary to the Government of India in the Home Department, forwarding copies of two Despatches from the Honorable Court formally disallowing and desiring the repeal of Act VI of 1856 (for granting exclusive privileges to Inventors).

MR. PEACOCK moved that the above communication be referred to the former Select Committee on the Patents Bill, consisting of the Chief Justice, Mr. Grant, and Mr. Peacock.

Agreed to.

OPIUM (BENGAL.)

MR. CURRIE presented the Report of the Select Committee on the Bill "to consolidate and amend the Law re-

lating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal."

OFFENCES AGAINST THE STATE.

MR. PEACOCK presented the Report of the Select Committee on the Bill "for the trial and punishment of offences against the State."

PIRATICAL VESSELS (STRAITS SETTLEMENT.)

MR. PEACOCK moved that the Council resolve itself into a Committe on the Bill "to authorize the arrest and detention, within the ports of the Settlement of Prince of Wales Island Singapore, and Malacca, of Junks or Native Vessels suspected to be piratical;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and was reported.

COURTS MARTIAL (NATIVE ARMY.)

MR. PEACOCK moved that the Standing Orders be suspended, to enable him to bring in and pass through its several stages a Bill "to amend Act XIX of 1847" (the Articles of War for the Native Army.)

The motion was seconded by General Low, and carried.

MR. PEACOCK then moved the first reading of a Bill "to amend Act XIX of 1847." In doing so, he said he regretted to be under the necessity of having to introduce a Bill the object of which was to facilitate the trial and punishment of Native Officers and soldiers for offences against the Articles of War. It was unnecessary for him to inform the Council of the feeling which had recently manifested itself in several Regiments of the Native Army—to detail the acts to which such feeling had led—or to dwell upon the necessity which existed of taking prompt and vigorous measures to suppress it. One of the measures which appeared to be necessary was to arm Officers in command of Troops with power to assemble General or other Courts Martial, as occasion might require, without delay, and to confirm and carry into immediate effect the sentences of such Courts. By the Articles of War for the Native Army as they now stood, the only Court Martial which could try and award the full extent of punishment for the offence of mutiny, was a General Court Martial assembled by order of the Commander-in-Chief, or by some Officer invested by him with that power; and the sentence of the Court so assembled could not be carried out until it was confirmed by the Commander-in-Chief, or by an Officer having authority from him for that purpose. In a crisis like that which existed at present, the delay attending the assembling of General Courts Martial and the confirming of the sentences passed by them, whenever the Commander-in-Chief was at a distance, must of necessity detract from the effect of the punishment. It had, therefore, been considered proper by the Governor General in Council to empower every General Officer commanding a Division, every Brigadier, and every Officer commanding a Station, being the senior Officer on the spot, to convene a General, District, or Garrison Court Martial, as occasion might require, and to confirm and give immediate effect to the sentence of such Court. It was necessary, however, that an Act should be passed for the purpose.

The first Section of the Bill which he proposed to pass, enacted as follows:—

"It shall be lawful for the Governor General of India in Council, from time to time, by Order in Council, to empower every General or other Officer having the Command of Troops in the Service of Her Majesty or of the East India Company, or any of such General or other Officers, to appoint General, or District, or Garrison Courts Martial, as occasion may require, for the trial of any of the Officers, Soldiers, or Followers in the Service of the East India Company, being Natives of the East Indies or other places within the limits of the said Company's Charter, and amenable to the Articles of War for the Native Troops, who may be charged with any offence punishable by the said Articles of War, which, in the judgment of such General or other Officer, requires to be punished without delay; and also to confirm and carry into effect, immediately or otherwise, any sentence of such Court Martial; or to commute, mitigate, or remit any such sentence; or, in case he shall deem it necessary so to do, to refer

any such sentence to the Commander-in-Chief for his orders thereon."

That was the first part of the Bill. It enabled any Commanding Officer, if authorized by the Governor-General in Council, whether he was in command of the Regiment to which the offender belonged or not, at once to convene a Court Martial, and also immediately to carry into effect the sentence of such Court; or to commute, mitigate, or remit any such sentence; or, in case he should think it necessary, to refer it to the Commander-in-Chief for his orders thereon. The great object was, to avoid delay in convening Courts Martial, and carrying sentences into effect. It had, however, been thought right that the Officer who had power to confirm, should also have power to commute or mitigate a sentence, or to refer the same to the Commander-in-Chief if he should think fit.

Article 74 of Act XIX of 1847 provided that a General Court Martial should not consist of less than thirteen Commissioned Officers, unless it should be held out of the East India Company's territories; in which case, it might consist of seven Commissioned Officers, if a greater number could not be conveniently assembled. The second Section of this Bill provided that any General Court Martial which might be appointed under the authority of the Act, should be appointed by the senior Officer on the spot, and should consist of not less than five Commissioned Officers, the number to be fixed by the General or other Officer appointing the Court Martial, having regard to the number of Officers that could conveniently be convened on the spot. The Order in Council might direct that a General Court Martial to be appointed under the Act should consist wholly of European Commissioned Officers, or wholly of Native Commissioned Officers; and in such case, the Officer appointing the Court Martial would have power to determine whether the Court should consist of European or of Native Officers. The Articles of War as they at present stood did not specify whether the Officers who were to compose a General Court Martial for the trial of Native Officers and soldiers should be European or Native Commissioned Officers. It was only provided that "A General Court Martial shall not consist of less than thirteen Commissioned Officers." But being an Act for the trial and punishment of Officers and soldiers in the Native Army, the practice hitherto had been to appoint Native Officers. He did not know that it was necessary expressly to empower the Government to direct that a General Court Martial assembled under its provisions might consist wholly of European or of Native Commissioned Officers; but to avoid any doubt upon a subject in which the practice had been uniform, he had thought it better to insert such a provision. He hoped and believed that, although the majority of the Native Officers were perfectly loyal and willing to discharge their duty to the State faithfully, there were many who could not be trusted, and a necessity might arise in many cases that the Officer convening the Court Martial should have the power of directing that the Members should be wholly European; and this Bill gave that power.

Article 96 of the present Law enacted that "no sentence of death shall be given against any offender by a Court Martial unless two-thirds of the Members present concur therein, or four where the Court consists of five members, or five where the Court consists of seven." It appeared to him that, in cases such as those which the Bill was intended to meet, sentence of death, or other punishment to which the offender was liable under the Articles of War, ought to be given by the Court if a majority of the Members concurred in the sentence. In cases not military, sentences in criminal matters in the Mofussil were given generally by a single Judge; and in the Sudder Court, a majority of the Judges composing the Court might pass sentence of death. He did not, therefore, consider that it was going too far to allow a sentence of death to be given by a majority of the members of a Court Martial, instead of requiring the concurrence of four Members in a Court consisting of five.

These were the main provisions of the Bill. They would arm European Officers with greater power over their Native Troops than they now possessed; and he trusted that they might be productive of a beneficial result.

There was one other Clause to which

he would draw attention. An Order was issued by the Governor General in Council on this subject on Thursday last, at a time when the Legislative Council was not sitting. He proposed to confirm that Order, and to give effect to it from the date on which it was passed. To that extent, this Bill would be retrospective. He had not set out the Order in the Bill; but he held in his hand the *Gazette* in which it had been published, and would read it for the information of the Council:—

"The Right Honorable the Governor General in Council is pleased to authorize every General Officer Commanding a Division, every Brigadier, and every Officer Commanding a Station, being the Senior Officer on the spot, to appoint General or other Courts Martial, as occasion may require, for the trial of any of the Officers, or Soldiers, or Followers, in the Service of the East India Company, being Natives of the East Indies, or of other places within the limits of the said Company's Charter, who may be charged with any offence which, in his judgment, requires to be punished without delay; and to confirm and carry into effect at once, or to mitigate, or to commute, or remit, all Sentences of such Courts Martial, or, in case he shall deem it necessary, to refer any such Sentence to the Commander-in-Chief for his orders thereon.

General Courts Martial assembled under this authority shall consist of not less than five Native Commissioned Officers, and shall have the full powers of a General Court Martial as specified in the 75th Article of War.

With these remarks, he begged to move the first reading of the Bill.

The Motion was put and carried, and the Bill read a first time.

MR. PEACOCK moved the second reading of the Bill.

THE CHIEF JUSTICE said, the Honorable and learned Member might feel perfectly sure that there could be no disposition on the part of this Council —nor, he imagined, could there have been any disposition on the part of any other Legislative Body, however popular in its form of constitution—to refuse to give the powers which, at the present crisis, the Government of India required. For if any element of social discord could be conceived more dangerous than another to the State, it was the existence of a disorganized soldiery —of bodies of armed men freed from that discipline and subordination which were essential conditions to the existence of a Standing Army in every community whose form of polity gave it any pretensions to be called a State.

The powers which were asked of the Council, were perfectly reasonable. To meet such a state of things as he had contemplated, it was not only necessary for the safety of the State, but desirable as the best mercy to men who were likely to be deluded into mutiny themselves by the example of successful mutiny by others, that punishment should be, not only severe, but prompt and certain.

The first power asked for, seemed to him calculated to render punishment prompt—to remove those formal impediments to the speedy convening of Courts Martial, the existence of which might be expedient in ordinary times, but which, in a large Empire like this, it was extremely unadvisable to preserve during a period of difficulty and danger.

The second power asked for, seemed to him calculated to render punishment certain, where it might not be so now. Like the Honorable and learned Member opposite, he would express his hope, and indeed his belief, that, in many cases, Native Officers would be found worthy of the trust which might be committed to them as Members of Courts Martial: he believed that, hitherto, they had generally exercised such trust faithfully and well. But, on the other hand, it was impossible not to conceive that, at such a juncture as this, there might be occasions on which it would be impossible to intrust to the Native Officers of particular Regiments or Stations this important duty, with any confidence that it would be faithfully performed.

The Articles of War for the Native Army as they existed, did not seem to make it imperative that Courts Martial convened for the trial of Native soldiers should consist exclusively of Native Officers. The term used was general—it was "Commissioned Officers." In practice, this had been construed "Native Commissioned Officers." But in principle, there was no reason why, in military cases more than in civil cases, an offender should be tried by Judges of his own race. He could, therefore, see nothing objectionable in the proposal to empower Commanding Officers to compose these Courts Martial of European Officers, whilst he did

see the strongest reasons for giving such a power at the present time. One doubt, however, had occurred to his mind with regard to Section II, whilst he heard it read. It was this—whether the Section did not unnecessarily provide that the Courts Martial appointed under the Act should, in all cases, consist either wholly of European, or wholly of Native Officers, and whether it might not be an improvement to add the words "or partly of European and partly of Native Officers." The Honorable and learned Member had, perhaps, good reason for framing the Section as he had done; but such reason had not suggested itself to his (the Chief Justice's) mind, and he thought it right to mention it.

With respect to the confirmation of the Order passed by the Governor-General in Council on the 14th Instant, he apprehended that there could be but one opinion. No one could doubt that it was right in the Executive Government to take the earliest opportunity of removing anything which might tend to paralyze the arm of Justice, or impede its action, in such an emergency as this; and, in confirming the Order in question retrospectively, this Council would only be doing that which all must wish to do—namely, to indemnify the Executive for the proceedings which might be taken under the Order, and to declare that, in issuing it, the Government had acted with proper energy and judgment.

MR. PEACOCK said, he wished to make but one remark in reply to the suggestion of the Honorable and learned Chief Justice that it would have been an improvement if Section II had also provided for the appointment of mixed Courts Martial. That question had been fully considered by the Government, and it appeared to him that there might be very considerable difficulty in carrying out such a plan. If a Court Martial was to consist of five Members, and the opinion of the majority was to rule, it would be a mockery to compose the Court partly of Europeans and partly of Natives; because if there were three Europeans and two Natives, and the Europeans differed from the Natives, the Europeans would carry the question against the Natives; and, in the same way, if there were three Natives and two Europeans, and the Natives differed from the Europeans, the Natives would carry the question against the Europeans. It had, therefore, appeared to him that, whatever might be well in other cases, in the present case it would be better to provide that Courts Martial appointed under this Act should consist either solely of European, or solely of Native Officers.

The motion for the second reading was then put and carried, and the Bill read a second time.

MR. PEACOCK said, he thought it important that this Bill should be passed at once, and he should therefore move that the Council resolve itself into a Committee upon it now. It was not his wish, however, to hurry it through the Council; and, therefore, if any Honorable Member desired to consider its provisions at greater leisure than he had had an opportunity of doing, the Council might adjourn for half an hour. The Bill was a short one, and had been framed by him with care.

The motion to go into Committee was agreed to.

The Bill passed through Committee without amendment, and was reported.

The Bill was then read a third time and passed.

MR. PEACOCK moved that Mr. Grant be requested to carry the Bill to the Governor General for his assent.

Agreed to.

PIRATICAL VESSELS (STRAITS SETTLEMENT.)

MR. PEACOCK gave notice that he would, at the next meeting of the Council, move the third reading of the Bill "to authorize the arrest and detention, within the Ports of the Settlement of Prince of Wales' Island, Singapore, and Malacca, of Junks or Native vessels suspected to be piratical."

OFFENCES AGAINST THE STATE.

Also, that he would, at the next meeting of the Council, move for a Committee of the whole Council on the Bill "for the trial and punishment of Offences against the State."

BOMBAY LAND CUSTOMS.

MR. LEGEYT moved that a communication received by him from the Go-

vernment of Bombay be laid upon the table and referred to the Select Committee on the Bill "to make better provision for the collection of Land Customs on certain Foreign Frontiers of the Presidency of Bombay."

Agreed to.

BOMBAY PORT-DUES.

MR. LEGEYT gave notice that he would, on Saturday the 23rd Instant, move the first reading of a Bill for the levy of Port Dues and Fees in certain Ports within the Presidency of Bombay.

COURTS MARTIAL (NATIVE ARMY.)

MR. GRANT delivered to the Vice-President the Bill "to amend Act XIX of 1847," who thereupon announced that the Governor General had signified his assent thereto.

OPIUM.

MR. CURRIE gave notice that he would, on Saturday the 23rd Instant, move for a Committee of the whole Council on the Bill "to consolidate and amend the Law relating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal."

The Council adjourned.

Saturday, May 23, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	Hon. B. Peacock,
Hon. Major General J. Low,	P. W. LeGeyt, Esq.,
Hon. J. P. Grant,	E. Currie, Esq., and Hon. Sir A. W. Buller.

The following Messages from the Governor-General were brought by Mr. Grant and read:—

MESSAGE NO. 102.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 9th May 1857, entitled "A Bill to repeal Act VI of 1856."

By order of the Right Honorable the Governor-General.

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 20th May 1857.

MESSAGE NO. 103.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 2nd May 1857, entitled "A Bill to amend Act XXXVII of 1855."

By order of the Right Honorable the Governor-General.

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 20th May 1857.

JOINT-STOCK COMPANIES.

THE CLERK presented to the Council a Petition of the British Indian Association against so much of the Bill "for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the Members thereof" as excludes Banking and Insurance Companies from the operation of the principle of limited liability.

THE CHIEF JUSTICE moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

PORT-DUES (MADRAS.)

THE CLERK reported to the Council that he had received a communication from the Chief Secretary to the Government of Fort St. George with two draft Bills for the levy of Port-dues and fees within the Madras Presidency.

MR. CURRIE moved that the above communication, together with a former one on the subject from the same Government, be printed.

Agreed to.

PORT-DUES AND FEES (BOMBAY.)

MR. LEGEYT moved the first reading of a Bill "for the levy of Port-dues and fees in the Port of Bombay."

The charges now in force at Bombay, which could properly be carried to the credit of Port-dues, were levied under the head of Light-house dues, Buoy and Anchorage fees, and Harbor services. All ships and vessels down to the burden of 20 tons, paid at the rate of 15 Rs. per 100 tons: all boats and vessels down to the burden of 10 tons, paid 2 Rs. per annum as Light dues: and all vessels not receiving Pilots paid for Buoy and Anchorage fees 3 Rs. per annum when the burden was from 10 to 20 tons, 6 Rs. per annum when the burden was from 20 to 30 tons, and so on, increasing in the same ratio as the tonnage increased.

The Government of Bombay had proposed that the Light-house dues should be levied on each arrival of a vessel in the harbor from seaward at the following rates —

	Rs.	As.	P.
Below 10 tons, ...	0	0	0
From 10 to 20 tons, ...	0	8	0
„ 20 to 100 tons,.....	1	0	0
„ 100 to 200 tons, ...	2	0	0
„ 200 to 300 tons, ...	3	0	0

—and so on, at the rate of 1 Rupee additional for every 100 tons.

The Government went on to propose that the Anchorage fees should be levied on each arrival, and not annually as hitherto, with a proviso that no vessel should be held liable to pay any fees in Bombay more than once in the same calendar month.

They had further proposed that Anchorage fees should be levied only from those vessels which did not take Pilots on board, and that rates should be fixed nearly on the scale at which such fees were now levied at the Ports in that Presidency under Act I of 1852.

In framing this Bill, he had thought it preferable to follow the course adopted in the Bills now before the Council for the levy of Port-dues in the Ports under the Presidency of Fort William, and to provide for one consolidated rate instead of the various fees proposed by the Government of Bombay; which consolidated rate should include all the Port-dues now levied under the head of Light-dues, Buoy and Anchorage fees, and Harbor services. He had excluded Pilotage fees altogether. He found, by the provisions of Section XLIV of Act XXII of 1855, that the receipts and expenses on account of Pilotage were expressly excluded from the account of the Port Fund therein directed to be kept.

As he had observed before, the Government of Bombay would exempt vessels taking Pilots from any Anchorage fees; but it appeared to him that there was no sufficient reason for such exemption, and that it would be inconsistent with Section XLIV of Act XXII of 1855, since some part of the Pilotage fees would, in that case, be carried to the credit of the Port-dues Fund He, therefore, proposed to charge all vessels, whether taking Pilots or not, Port-dues under this Bill.

He found from the papers before him that about 45,000 Rupees was required for the annual expenditure from the Port Fund. The present income derived from the dues levied in the harbor of Bombay was about 72,000 Rs.; and the expenditure, exclusive of Pilotage dues, did not exceed 45,000 Rs. These charges were obviously higher than were required for the purposes of the Port; and he found that a consolidated charge of two annas per ton on the 400,000 tons of shipping, which was the average amount of tonnage that had entered the Port of Bombay during the years 1852-53-54, to be levied on each arrival, with a provision against any levy more than once in the same calendar month, would give an income of about 50,000 Rs., which, with the present fees for Harbor services—such as transporting vessels, hauling in or out of dock, and the like—would be found sufficient for the present requirements of the Port.

He had, accordingly, provided in the Bill that a Port-due at a rate not exceeding the rate of two annas per ton should be chargeable on every sea-going vessel of the burden of ten tons and upwards which should enter the Port of Bombay.

He had excluded from the operation of the Act fishing boats and harbor craft.

Tug Steamers (of which there were none in Bombay at present,) and Steamers employed in the Coasting trade,

were made chargeable by the Bill with these Port-dues once only between the 1st of January and the 30th of June, and once only between the 1st of July and the 31st of December in each year; and they were exempted from the operation of Section XLVI of Act XXII of 1855.

The Bill was read a first time.

PORT-DUES AND FEES (KURRACHEE.)

MR LEGEYT moved the first reading of a Bill "for the levy of Port-dues and fees in the Port of Kurrachee."

The Port-dues now levied there, as shewn in a communication received from Colonel Jacob, the Officiating Commissioner in Scinde, were on account of Anchorage and Light dues only, and amounted, according to an average for the years 1852-53-54, to 7,000 Rs. per annum; and the current expenditure for the same period was set down at an average of 12,513 Rs., exclusive of the cost of Pilot boats. Besides, there had been a large expenditure, amounting to 92,865 Rs., on works connected with the harbor. Colonel Jacob was strongly opposed to the levy of any heavy Port-dues with the object of paying these expenses out of them. He said—

"Considering that Kurrachee is a new Port, working its way under difficulties, and with prejudices to contend with, its Port-dues cannot, I am of opinion, be too light; and I should be sorry indeed to see the trade very much more heavily assessed in respect of them than it is at present.

"It occurs to me that, for Anchorage, Buoy, and Light-house fees, a consolidated charge of four annas a ton, levied quarterly on all vessels above ten tons, fishing boats and harbor craft excepted, would be a fair and equitable assessment upon our shipping.

"The income which such an assessment would realize at Kurrachee, it is estimated, would amount to between 15,000 Rs. and 20,000 Rs.; add to this, the probable amount of fees for piloting vessels on Captain Ethersey's scale, say 1,000 Rs. We may reasonably calculate, I think, on an income, from the sources indicated, of about 20,000 Rs. a year, beyond which I conceive it would be impolitic to burden the trade. Rather should we look to an increasing commerce augmenting these resources, than at once raise them to the level of present and contemplated outlay."

He (Mr. LeGeyt) thought that, with the charges made for Harbor services, the rate proposed by Colonel Jacob of four annas per ton for Anchorage and Light dues on all vessels above ten tons burden, fishing-boats and harbor craft excepted, would about produce the income necessary for the wants of the Port of Kurrachee. The Government of Bombay, however, did not quite agree with Colonel Jacob's proposal. They rather preferred separate rates for Buoy and Anchorage fees and Light-house dues, exempting vessels taking Pilots from the former. He (Mr. LeGeyt) confessed that, upon reflection, he could not see the advantage of this plan over that recommended by Colonel Jacob, which chimed in with the plan proposed for the Ports under the Presidency of Fort William. He had, accordingly, proposed a consolidated charge for Port-dues, at the rate of four annas per ton for every sea-going vessel of the burden of ten tons and upwards, with the exception of fishing-boats and harbor craft. Colonel Jacob had suggested that this rate should be levied quarterly: the Government of Bombay was of opinion that the fees it proposed ought to be levied monthly; and he thought that, as he had excluded from Colonel Jacob's estimate all income from Pilotage charges, it would be as well that four annas per ton should be levied at Kurrachee, as at Bombay, on each arrival, provided that such levy did not take place from the same vessel oftener than once in the same calendar month.

The charges for Harbor services, he proposed, should be the same at Kurrachee as at Bombay.

The Bill was read a first time.

PORT-DUES AT TUNKARIA AND BROACH.

MR. LEGEYT moved the first reading of a Bill "for the levy of Port-dues in the Ports of Tunkaria and Broach" These Ports were situated in the province of Guzerat, and were approached from the sea out of the Gulf of Cambay, and were thirty miles distant from each other. He had, therefore, taken them together, and placed them in one Bill.

The sums received at both Ports for Light-dues were levied under Regulation VI of 1831 and Act I of 1836.

With respect to Tunkaria, he found that the income now derived at the Port, exclusive of Light-dues, was about

1,100 Rs. per annum, and arose from Anchorage fees levied on each arrival. The aggregate tonnage resorting to the Port was stated at 10,504 a year. Improvements were proposed to be made in the Port to the amount of 16,000 Rs.; and the cost of the maintenance of these new works was estimated at 150 Rs. per annum. To meet this outlay, the Commissioner of Customs proposed to increase the Anchorage fees by 50 per cent. The Bombay Government, however, was of opinion that the scale should not be so high as this. It concurred with the Commissioner in considering this enhanced rate desirable; but it would substitute a scale of duties calculated on the ton, for the duty per Candy recommended by that officer. He (Mr. LeGeyt) himself thought that a tonnage due of three annas per ton on every sea-going vessel entering the port, not being a fishing-boat, of a burden of ten tons and upwards, and payable only once in the same calendar month, would be sufficient to raise the income required for the exigencies of the Port.

For Broach, which was a much larger Port—Tunkaria being a mere bunder, and the other an extensive commercial town—the income required was stated to be 5,000 Rs. per annum. The Commissioner of Customs had suggested that part of this sum should be set aside for certain projected improvements in the Port, the cost of which he estimated at 48,000 Rs. A Port-due at Broach at the same rate as at Tunkaria, would give an income of probably about 5,700 Rs. per annum, which would be sufficient to meet all expenses which the local authorities might require for the purposes of the Port.

Act I of 1836 allowed the Government to apply the funds derived from Light-dues to purposes other than the maintenance of the Light-house, provided such purposes would be conducive to the good of the Ports, and to the commerce of the neighbourhood. In some of the letters addressed to the Government of Bombay, it was proposed that the whole of these Light-dues should be devoted to the improvement of Tunkaria and Broach. But it appeared to him that the Act hardly intended to go so far as to empower the Government to provide piers, wharfs, and such like works out of these funds. It rather appeared to him that the real intention was that the funds should be appropriated to the improvement of the navigation of the Gulf of Cambay; and it seemed desirable not to divert them to the benefit of any particular Port within it.

The Bill was read a first time.

PORT-DUES AT MADRAS.

MR. CURRIE moved the first reading of a Bill "for the levy of Port-dues and fees at Ports within the Presidency of Fort St. George, and to provide against the discharge of ballast in certain Ports within the said Presidency."

He said, the Bill had been sent up by the Madras Government, and in the absence of his Honorable friend the Member for Madras, he had taken it upon himself to bring it before the Council, in accordance with the wish expressed by the Governor-in-Council at Madras. In deference to the Government of that Presidency, he thought it right to present the Bill precisely in the form in which it had been sent up; but he was not prepared to say that it ought to pass in that form. The Bill provided that a Port-due not exceeding four annas per ton should be levied at certain Ports to which it was intended to extend the provisions of Act XXII of 1855; but no particulars were given of the expenses incurred at the several Ports. It also proposed that, at certain other Ports, to which it was not intended to extend the provisions of Act XXII of 1855, the Port-dues now levied should continue to be levied, and that provisions should be enacted for the purpose of protecting those Ports and the channels leading to them from being injured by the discharge of ballast and rubbish. For his own part, he was inclined to think that, wherever Port-dues were levied, the Harbor Act ought also to be extended. If there were an agency to collect Port-dues, there might also be an agency to carry out the provisions of the Harbor Act. That, however, would be a question for the consideration of the Select Committee in case the Bill should be permitted to be read a second time.

The Bill was read a first time.

PORT-DUES (MOULMEIN, RANGOON, &c.)

MR. CURRIE moved the second reading of the Bill "for the levy of Port-dues in the Ports of Moulmein, Rangoon, Dalhousie, Akyab, and Chittagong."

MR. PEACOCK said, it was not his intention to offer any objection to the second reading of the Bill; but he wished it to be understood that, in voting for the Honorable Member's motion, he did not pledge himself to the rates which the Bill proposed. Indeed, the Honorable Member himself admitted, in his Statement of objects and reasons, that some of them might be open to revision. He (Mr. Peacock) thought that to levy, as the Bill did, a rate of six annas per ton in Dalhousie, when the rate for Akyab was to be only two-and-a-half annas per ton, might be very hard upon that new and rising Port. He mentioned this at the present stage merely to inform the Council that, though he should vote for the second reading, he reserved to himself the right of moving such amendments in the Schedule of rates as might appear to him to be necessary when the Bill came before a Committee of the whole Council.

MR. CURRIE'S Motion was carried, and the Bill read a second time.

PIRATICAL VESSELS (STRAITS SETTLEMENT.)

MR. PEACOCK moved that the Bill "to authorize the arrest and detention, within the Ports of the Settlement of Prince of Wales' Island, Singapore, and Malacca, of Junks or Native Vessels suspected to be piratical" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

OFFENCES AGAINST THE STATE.

MR. PEACOCK moved that the Council resolve itself into a Committee on the Bill "for the trial and punishment of offences against the State;" and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

Agreed to.

The Bill passed through Committee after some verbal amendments, and was reported.

OPIUM (BENGAL PRESIDENCY.)

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill "to consolidate and amend the law relating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to XXVI were passed as they stood.

Section XXVII provided that, when any person was sentenced to pay any fine under the Act, he might, in default of payment, be imprisoned by order of the Magistrate for any time not exceeding six months, or until the fine is paid.

MR. PEACOCK said, as this Bill transferred the power of fining from the Collector to the Magistrate, it was desirable that it should conform to the general Law which now existed for the levy of fines in all cases punishable by Magistrates. Act II of 1839 was that Law, and it provided that—

"in all cases of fines by which offenders are or may be punishable by any Magistrate, according to the provisions of any Act heretofore passed, or which shall hereafter be passed, by the Governor-General of India in Council, it shall be lawful, in case of non-payment, if no other means for enforcing the payment are or shall be provided by such Act or otherwise, for the Magistrate, by warrant under his hand, to levy the amount of such fine by distress and sale of any goods and chattels of the offender which may be found within the jurisdiction of such Magistrate; and if no such property shall be found within such jurisdiction, then it shall be lawful for every such Magistrate, by warrant under his hand, to commit the offender to prison,"

with or without hard labor,

"for any term not exceeding two calendar months where the amount of the fine shall not exceed fifty Rupees, and for any term not exceeding four calendar months where the amount shall not exceed one hundred Rupees; and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid upon payment of the amount."

That Act, therefore, proportioned the term of imprisonment to the amount of fine. This Bill allowed six months' imprisonment without reference to any amount of fine. Where a Magistrate could not imprison for more than two months under Act II of 1839, he would be able to imprison for six months under this Bill. It appeared to him (Mr. Peacock) that the provision in the general Law for the mode in which fines awarded by Magistrates should be commuted, ought to be applicable to cases arising under this Bill.

He saw it stated in one of the annexures to the Bill that great inconvenience had been experienced from the confused and uncertain state of the Abkaree Laws. If any inconvenience had arisen with respect to the Abkaree Laws, the same inconvenience would arise with respect to cases of all other descriptions in which a Magistrate had to impose a fine, and there was no specific mode provided for recovering it. If the Abkaree Laws gave rise to any inconvenience, they ought to be amended. For his own part, he thought that the inconvenience complained of was owing to the fact that the offender could not be subjected to imprisonment except upon failure of levying the fine from his goods and chattels.

Then, Section XXVIII said that the provisions of Section XXVII should be applicable also to persons sentenced to pay any forfeitures and penalties under Act XXI of 1856, which was an Act to consolidate and amend the Law relating to the Abkaree Revenue in Bengal. If it was necessary to provide that a fine or forfeiture awarded under Act XXI of 1856 might, in default of payment, be commuted to imprisonment for any term not exceeding six months, a separate enactment should be passed for the purpose, so that persons referring to the Laws relating to the Abkaree Revenue might see from them alone the remedy allowed in case of default. But no one would ever think of looking for a provision on that subject in an Act to consolidate and amend the Law relating to the cultivation of the Poppy and the manufacture of Opium.

He should, therefore, propose, for the present, that Section XXVII be omitted.

MR. CURRIE said, he did not think that the remarks of the Honorable and learned Member with regard to the term of imprisonment being proportioned to the amount of fine, were properly applicable to a Law of this kind. By this Law, the smallest maximum penalty prescribed was five hundred Rupees; and in commutation for that amount, six months' imprisonment was not too much. Every person offending against the Act would be liable to a fine of five hundred Rupees. If less than five hundred Rupees should be imposed, it would be probably in consideration of the circumstances of the offender. If he was a poor man, the fine awarded would generally be less than five hundred Rupees; but the circumstances which would influence a Magistrate in fixing the amount of fine, would not necessarily affect the term of imprisonment in default of payment.

One reason which he had for inserting Section XXVII was, that it was desirable to have a Law on such a subject as this complete in itself, so that every person offending against it should see from it the penalty to which he was subject. Another reason was that, when the Penal Code passed, Act II of 1839 would probably be abrogated; for the Penal Code would itself contain provisions for the punishment of all the offences to which it referred—namely, punishment of all offences except Revenue offences. It, therefore, appeared to him that in every Revenue Law which might be passed, there should be a distinct provision for the mode of commuting fine to imprisonment. The provision made for this point in the Penal Code would not be applicable to the offences against which this Bill was directed.

In the remarks of the Honorable and learned Member with respect to Section XXVIII of the Bill, he entirely concurred. He admitted that the Section was out of place in the Bill, and he should assent to its omission, undertaking to introduce shortly a separate Bill to amend the Akbaree Law. But he thought that Section XXVII ought to be retained.

Section XXVII was put and agreed to.

Section XXVIII was negatived.

The remaining Sections, with the Title and Preamble, were passed as they stood, and the Bill was reported.

PORT-DUES AND FEES (BOMBAY.)

MR. LEGEYT moved that a communication which he had received from the Government of Bombay, relative to the levy of Port-dues in certain Ports within the Presidency of Bombay, other than the Ports for which Bills had been this day read a first time, be laid upon the table and printed.

Agreed to.

PORT-DUES (MOULMEIN, RANGOON, &c.)

MR. CURRIE moved that the Bill "for the levy of Port-dues in the Ports of Moulmein, Rangoon, Dalhousie, Akyab, and Chittagong" be referred to a Select Committee consisting of Mr. Grant, Mr. LeGeyt, and the Mover.

Agreed to.

PIRATICAL VESSELS (STRAITS SETTLEMENT.)

MR. PEACOCK moved that Mr. Grant be requested to take the Bill "to authorize the arrest and detention, within the Ports of the Settlement of Prince of Wales' Island, Singapore, and Malacca, of Junks or Native Vessels suspected to be piratical," to the Governor-General for his assent.

Agreed to.

OFFENCES AGAINST THE STATE.

MR. PEACOCK gave notice that he would, on Saturday the 30th Instant, move the third reading of the Bill "for the prevention, trial, and punishment of offences against the State."

The Council adjourned.

Saturday, May 30, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	Hon. B. Peacock,
Hon. Major General J. Low,	P. W. LeGeyt, Esq.
Hon. J. P. Grant,	E. Currie, Esq. and Hon. Sir A. W. Buller.

SALES OF LAND FOR ARREARS OF REVENUE (BENGAL).

THE CLERK presented a Petition from the British Indian Association concerning the Bill "to improve the law relating to sales of land for arrears of revenue in the Bengal Presidency."

MR. GRANT moved that the Petition be referred to the Select Committee on the Bill.

Agreed to.

THE PENAL CODE.

(Offences against Religion.)

THE CLERK presented a Petition from Protestant Missionaries resident in and near Calcutta against certain provisions of Chapter XV of "The Indian Penal Code," treating of offences against Religion.

MR. PEACOCK moved that the Petition be referred to the Select Committee on the Code.

Agreed to.

JOINT-STOCK COMPANIES.

MR. PEACOCK presented the Report of the Select Committee on the Bill "for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the members thereof."

OFFENCES AGAINST THE STATE.

On the Order of the Day for the third reading of the Bill "for the prevention, trial, and punishment of offences against the State" being read—

MR. PEACOCK moved that the Bill be recommitted, in order that certain amendments might be introduced into it.

Agreed to.

Section I provided as follows:—

"All persons who, after the promulgation of this Act, shall be guilty of treason or rebellion within any part of the Territories in the possession and under the Government of the East India Company, shall be liable, upon conviction, to the punishment of death, or to the punishment of transportation, or of imprisonment with hard labour for any term not exceeding fourteen years; and shall also forfeit all their property and effects of every description. Provided that nothing contained in this Section shall extend to any place subject to Reg. XIV of 1827 of the Bombay Code."

SIR ARTHUR BULLER said, he had to suggest an amendment in this Section, the object of which was to get rid of any technical difficulties which the word "Treason" might possibly suggest; and, accordingly, he moved that, in lieu of the first five lines of the

Section as it stood, (that is, as far as the words "East India Company") the following words be substituted:—

"All persons owing allegiance to the British Government who, after the passing of this Act, shall rebel or wage war against the Queen or the Government of the East India Company, or shall attempt to wage such war, or shall instigate or abet any such rebellion or the waging of such war, or shall conspire so to rebel or wage war"—

and then, the Section would go on as it did at present.

THE CHIEF JUSTICE asked if there was any particular object in the words "after the promulgation of this Act" in the Section as it now stood.

MR. PEACOCK replied that there was no necessity for the words, because the Act would take effect from the time it was passed.

With reference to the amendment proposed by the Honorable and learned Member opposite (Sir Arthur Buller), he would explain briefly how the word "Treason" had come to be inserted in the Section. Regulation X of 1804 empowered the Governor General in Council to proclaim Martial Law within the Presidency of Bengal, and declared that any person taken in open hostility to the British Government, or in the actual commission of any overt act of rebellion against the State, should be punishable with death. A similar Regulation was passed, some time afterwards, for the Presidency of Madras by the Government of that Presidency. But, under both Regulations, it was necessary that Martial Law should be proclaimed in the first instance, and that the offenders should be taken in the commission of the crime, and should be convicted by a Court Martial. The Regulation for Madras was found to be insufficient; and Regulation I of 1834 was passed in amendment of it. The Bill now before the Council was similar to Section II of that Regulation, which enacted that all persons who should be convicted of treason, or rebellion, or other crime against the State, committed after the promulgation of this Regulation, either by the ordinary Courts of Judicature, or before a Special Commission appointed under Regulation XX of 1820, should be liable to sentence of death; and it then went on to provide that the Sudder Court might pass such other mitigated sentence as might appear to them necessary and just; but that no sentence passed under its provisions should be carried into effect without the previous sanction of the local Government. At the time when this Bill was prepared, the Penal Code had been referred to a Select Committee; but that Committee had not then fully determined how the Code should stand: and he thought that, pending the consideration of that measure, it would be better to introduce a Law for Bengal to the same effect as the Law in force in Madras, differing from it only in this respect—that it should not be necessary to refer sentences passed by Courts Martial held under its provisions, to the Sudder Court for approval The word "Treason" was used in Regulation I of 1834 of the Madras Code, and also in Act V of 1841; and he had adopted it in this Bill. But he had no objection whatever to the amendment proposed by the Honorable and learned Member opposite. On the contrary, he thought it would be an improvement.

SIR ARTHUR BULLER'S motion was put and carried.

SIR ARTHUR BULLER said, before the Committee proceeded to Section II, he had a new Section to propose, with the view of providing for the case of accessories after the fact to the offences mentioned in the preceding Section. He need not point out how very grave was the offence of harboring persons who had been guilty of treasonable practices, nor how important it was to provide for such offenders adequate punishment. At the same time, he felt sure that the Council would agree with him that the same punishment should not be extended to accessories after the fact as to principals and accessories before the fact; and that, therefore, they could not well be dealt with in the same Section. He, therefore, moved that the following be inserted as a new Section after Section I:—

"All persons who shall knowingly harbour or conceal any person who shall have been guilty of any of the offences mentioned in the preceding Section, shall be liable to imprisonment with or without hard labor for any term not exceeding seven years, and shall also be liable to fine."

The Section was agreed to.

MR. PEACOCK said, in consequence of the alterations made in Section I, certain amendments would be necessary in Clause 1 of Section II.

There was also a technical objection to the wording of the Clause, which he observed had been pointed out. The Clause said—

"Whenever the Executive Government of any Presidency or place within the said territories shall *think it necessary* to proclaim that any District subject to its Government is in a state of rebellion, it shall be lawful for such Government to issue a Commission, &c."

The objection suggested was that this wording might mean that it should be lawful for the Government to issue a Commission when they simply thought it necessary to proclaim that a district was in a state of rebellion, without actually making the proclamation. To obviate any such misconstruction, he should move that the words "think it necessary to" be omitted.

The Section, as he proposed to amend it, would run as follows:—

"Whenever the Executive Government of any Presidency or place within the said territories shall proclaim that any District subject to its Government is or has been in a state of rebellion, it shall be lawful for such Government to issue a Commission for the trial of all persons who shall be charged with having committed, within such District, after a day to be specified in the Commission, any of the crimes mentioned in the preceding Sections; or any other crime against the State; or murder, arson, robbery, or other heinous crime against person or property."

The amendments were severally agreed to, and the Clause then passed.

Clause 2 of the Section was passed as it stood.

Section III was passed as it stood.

Section IV Clause 1 provided that no sentence passed by a Court held under the provisions of the Act, should be carried into effect without the sanction of the Executive Government.

MR. PEACOCK said, in this Section, also, he had followed Regulation I of 1834 of the Madras Code, which provided that no sentence should be carried into effect without the previous sanction of the Governor-in-Council. In cases of this nature, the great advantage of having Special Commissions was, that there should be no delay, and that the sentences passed should be carried into effect as soon as possible after the commission of the crime. The Council had very recently passed an Act empowering the Governor-General in Council to authorize Officers in command of troops to appoint, in case of necessity, General or other Courts Martial for the trial of persons amenable to the Articles of War for the Native Army, and to carry into immediate effect any sentence of such Courts, the object being to make the punishment prompt in order that it might be as effectual as possible. Whenever a district was in a state of rebellion, and the Executive Government considered it necessary to issue a Special Commission for the trial of the offenders, it appeared to him that the sentences of the Commissioners should be enforced at once. If the Commissioners entertained a doubt as to whether sentence of death in any particular case should be carried out, the sentence might be referred to the local Government; but it was to be observed that Section I would not make it obligatory on any Commission to pass sentence of death where it felt any such doubt. At present, a sentence passed by Special Commissioners in England, could be carried into effect without the sanction of the Executive Government; and it appeared to him that it was no more necessary to have such sanction in this country than in England when Her Majesty issued a Special Commission for the trial of offences against the State. The very object of taking these cases out of the jurisdiction of the ordinary tribunals was to ensure speedy and exemplary punishment upon offenders, with the view of deterring others from following their example. It, therefore, appeared to him that it would be frustrating the main object of this Bill to retain Clause 1 of Section IV; and he should move that the Clause be omitted.

Agreed to.

The 2nd Clause of the Section, and the remaining Sections, with the Preamble and Title, were passed as they stood.

MR. LEGEYT said, it appeared to him that the Proviso annexed to Section I, excluding Bombay from the operation of the Section, might, after the amendment introduced on the motion of the Honorable and learned Member opposite (Sir Arthur Buller), be advantageously

omitted, and the whole Bill made applicable to Bombay. The Law at Bombay said:—

"Any person subject to the criminal jurisdiction established by Regulation XI of 1827, Sections I and III, who shall raise or employ armed men for the purpose of making war against any of the British Governments in India, or the adjacent countries, for the purpose of open depredation; or who shall join men so raised or employed, or shall attempt the fidelity of the troops of any of the said Governments, or shall assist its foreign enemies or rebels; or who shall be guilty of any act for the subversion of any of the said Governments, or the forcible dismemberment of its territories, shall be liable to the punishment of treason."

And the punishment of treason was declared to be "death, and confiscation of property." The Regulation then proceeded to provide that—

"Persons exceeding twelve in number assembling for riotous or rebellious purposes not amounting to treason, shall be liable to the punishment of rebellion."

And it declared the punishment of rebellion to be "ordinary imprisonment, for a period not exceeding ten years, or fine, or both combined." He knew that considerable difficulty had arisen in the Presidency of Bombay from the word "Treason" in the Act, and he thought that this Bill as amended might be extended with advantage to that Presidency. He should, therefore, move that the Proviso in the Section be omitted.

THE CHIEF JUSTICE said, he agreed with the Honorable Member for Bombay in thinking that, on so important and general a question as punishment for offences against the State, it was desirable to have one Law for all the Presidencies. But he would ask if the Honorable Member did not think that the omission of the Proviso in Section I at the present stage might give rise to objection and difficulty. The Proviso excluded all the inhabitants of the Presidency of Bombay from the operation of the Section. If the Council struck it out now, might not the inhabitants of that Presidency complain that it subjected them at the very last moment to a provision regarding which they had had no opportunity of expressing their views?

After some conversation, MR. LEGEYT, with the leave of the Council, withdrew his motion.

The Council having resumed its sitting, the Bill was reported.

MR. PEACOCK moved that the Bill be now read a third time and passed.

The Motion was carried, and the Bill read a third time.

OPIUM (BENGAL PRESIDENCY).

MR. CURRIE moved that the Bill "to consolidate and amend the Law relating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal" be now read a third time and passed.

The Motion was carried, and the Bill read a third time.

BOMBAY UNIVERSITY.

MR. LEGEYT moved that a communication received by him from the Government of Bombay be laid upon the table and referred to the Select Committee on the Bill "to establish and incorporate an University at Bombay."

Agreed to.

RECOVERY OF RENT (BENGAL.)

MR. CURRIE gave notice that he would, on Saturday the 6th of June, move the first reading of a Bill to amend the Law relating to the recovery of rent in the Presidency of Fort William in Bengal.

OFFENCES AGAINST THE STATE.

MR. PEACOCK moved that General Low be requested to take the Bill "for the prevention, trial, and punishment of Offences against the State" to the Governor-General for his assent.

Agreed to.

OPIUM (BENGAL PRESIDENCY.)

MR. CURRIE moved that General Low be requested to take the Bill "to consolidate and amend the Law relating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal" to the Governor-General for his assent.

Agreed to.

THE PENAL CODE.

MR. LEGEYT moved that a communication received by him from the Government of Bombay on the subject of Slavery be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

NOTICES OF MOTION.

MR. LEGEYT gave notice that he would, on Saturday the 6th of June, move the second reading of the following Bills;—namely,

The Bill "for the levy of Port-dues and fees in the Port of Bombay."

The Bill "for the levy of Port-dues and fees in the Port of Kurrachee."

And the Bill "for the levy of Port-dues in the Ports of Tunkaria and Broach."

MR. PEACOCK gave notice that he would, on Saturday the 13th June, move for a Committee of the whole Council on the Bill "for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the members thereof."

OFFENCES AGAINST THE STATE.

GENERAL LOW having returned to the Council Chamber with the Bill "for the prevention, trial, and punishment of Offences against the State," the Vice-President announced that the Governor-General had signified his assent thereto.

The Council adjourned.

Saturday, June 6, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.
Hon. Major General J. Low,	E. Currie, Esq. and
Hon. J. P. Grant,	Hon. Sir A. W.
Hon. B. Peacock,	Buller.

The following Message from the Governor-General was brought by General Low, and read:—

MESSAGE NO. 105.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 30th May 1857, entitled "A Bill to consolidate and amend the law relating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal."

By order of the Right Honorable the Governor-General.

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 6th June 1857.

RECOVERY OF RENT (BENGAL).

MR. CURRIE postponed the motion (of which he had given notice for this day) for the first reading of a Bill to amend the Law relating to the recovery of rent in the Presidency of Fort William in Bengal.

PORT-DUES (BOMBAY.)

MR. LEGEYT moved the second reading of the Bill "for the levy of Port-dues and fees in the Port of Bombay."

MR. CURRIE said, there was one point to which he desired to draw the attention of the Honorable Member. Section V provided that Tug steamers and steamers employed only in the coasting trade should be liable to pay the Port-due only twice a year. But, under Section III, other vessels employed in the coasting-trade would be liable to pay once every calendar month. He did not see why this should be. The matter, however, was one of detail, and would doubtless be considered by the Select Committee to whom the Bill might be referred.

MR. LEGEYT said, a good deal of this Bill, which had been framed by himself, was not quite in accordance with the suggestions which had come from Bombay, and he believed that the provisions would undergo discussion in that Presidency. If the Government should object to any of them, it would send up its objections, and they would be taken into consideration. He might mention that Section V he had taken from the Bill which had been brought in for the levy of Port-dues and fees in

the Port of Calcutta. Steamers employed in the coasting-trade went in and out of the Port of Bombay quite as often as such steamers did in the Port of Calcutta.

The Honorable Member's motion was carried, and the Bill read a second time.

PORT-DUES (KURRACHEE.)

MR. LEGEYT moved that the Bill "for the levy of Port-dues and fees in the Port of Kurrachee" be read a second time.

The Motion was carried, and the Bill read a second time.

PORT-DUES (TUNKARIA AND BROACH.)

MR. LEGEYT moved the second reading of the Bill "for the levy of Port-dues in the Ports of Tunkaria and Broach."

The Motion was carried, and the Bill read a second time.

OFFENCES RELATING TO THE ARMY AND AGAINST THE STATE.

MR. PEACOCK moved that the Standing Orders be suspended, in order that he might bring in and pass through the several stages a Bill "to make further provision for the trial and punishment of offences relating to the Army, and of offences against the State."

GENERAL LOW seconded the motion, which was carried.

MR. PEACOCK then moved the first reading of the Bill. He said that, by Act XIV of 1849, every person who maliciously and advisedly endeavors to seduce any person serving or engaged to serve in the Military Forces of the East India Company from his allegiance to Her Majesty or duty to the said Company, or who endeavors to stir up any person belonging to the said Service to commit any act of mutiny, is liable, on conviction, to suffer transportation for life, or imprisonment, with or without hard labor, for any term not longer than seven years. One object of the present Bill was to increase the punishment provided for those offences. He thought it would be admitted on all hands that, in the present state of this country, it would not be too severe to make such offences punishable with death.

The first Section, then, of this Bill rendered all persons guilty of any of these offences liable to the punishment of death, or to transportation for life, or to imprisonment, with or without hard labor, for a period not exceeding fourteen years; and to forfeiture of all their property and effects. This was the punishment to which, by the Act passed by the Council last Saturday, persons committing offences against the State were made liable. In the present aspect of affairs, he thought it could scarcely be doubted that any person who seduced or attempted to seduce any officer or soldier in the service or pay of the East India Company from his allegiance to the British Government or his duty to the East India Company, or excited or attempted to excite any such officer or soldier to commit any act of mutiny or sedition, was quite as deserving of the punishment of death as a person guilty of any other offence against the State. It was well known that evil-disposed persons were going about the country spreading false reports among the Native troops for the purpose of exciting them to mutiny and rebellion. By Section I of this Bill, offenders of this class would be liable to the punishment of death. But there were offenders of another class who, in his opinion, were more guilty than the former, and upon whom the punishment of death might be inflicted with even greater justice—he alluded to persons in the back ground who employed their agents or emissaries to stir up the native soldiery; and, therefore, he had provided by the Bill that any person who intentionally caused or endeavored to cause any other person to commit such offence, should be liable, upon conviction, to the punishment of death.

By Regulation X of 1804, when Martial Law was proclaimed in any district, persons owing allegiance to the British Government, and guilty of certain offences against the State, might be tried by Courts Martial. In the present emergency, he had thought it right to provide that *any* person who should be guilty of any of the offences punishable by Sections I and II of Act XI of 1857, or by this Act, should be liable to be tried by Courts Martial; and that it should be lawful for the Governor-General in Council, by Order in Council,

to empower every General or other Officer in command of troops to appoint such Courts Martial as occasion might require; and also to confirm and carry into effect, immediately or otherwise, any sentence passed by the Courts so appointed. This provision corresponded with Section I of the Act VIII of 1857, which was passed by the Council on the 16th of May last, to amend Act XIX of 1847. That Act was applicable only to the case of offenders who were amenable to the Articles of War for the Native Army. This Bill would render persons who were not amenable to the Articles of War, liable to be tried by Courts Martial for offences against the Act in the same manner as if they were amenable to them.

He had also provided that Courts Martial appointed under the Act should be composed in the same way as Courts Martial appointed under the Act VIII of 1857—namely, either wholly of European, or wholly of Native Commissioned Officers.

By the Act relating to offences against the State, which the Council passed last Saturday, it was provided, that, whenever any district of a Presidency was proclaimed by the Executive Government to be or to have been in a state of rebellion, it should be lawful for the Government to issue a Commission for the trial of persons charged with the commission of any offence against the State, or any heinous crime against person or property. But although an entire district might not be in a state of rebellion, it might happen that there might be many individuals within it guilty of offences against the State, or of exciting or endeavoring to excite, or of causing or endeavoring to cause others to excite mutiny and sedition; and, therefore, in this Bill he had provided, as a temporary measure, that the Governor-General in Council, or the Executive Government of any Presidency, or any person whom the Governor General in Council might authorize so to do, might issue a Commission for the trial of persons charged with having committed within any district named therein, whether such district shall or shall not have been proclaimed to be in a state of rebellion, any offence punishable by Sections I and II of Act XI of 1857, or by this Act; or any other crime against the State; or murder, arson, robbery, or any other heinous crime against person or property. By this provision, not only the Governor-General in Council and the Executive Governments, but any other person whom the Governor-General in Council might invest with the power, would be able, if necessary, to issue a Special Commission. He thought that there could be no objection that the Chief Commissioner of the Punjaub, for instance, or the Chief Commissioner of Oude, as well as the Governor of a Presidency or the Lieutenant Governor of a Lieutenant Governorship should have such a power entrusted to him, if it should become necessary.

The term "soldier" in this Bill was defined to mean, not only officers and soldiers in the service of the East India Company, but every person subject to any Articles of War. This definition would bring within the Act the case of persons exciting or attempting to excite any of the troops of those Native Princes who had loyally sent their Forces to serve in aid of the British Government.

In making this Statement, he thought it would be as well to read the provisions of the Bill *in extenso*.

Section I provided as follows:—

"Whoever intentionally seduces, or endeavours to seduce, any Officer or Soldier in the service or pay of the East India Company from his allegiance to the British Government or his duty to the East India Company, or intentionally excites or stirs up, or endeavours to excite or stir up, any such Officer or Soldier, or any Officer or Soldier serving in any part of the British Territories in India, in aid of the Troops of the British Government, to commit any act of mutiny or sedition; and whoever intentionally causes, or endeavours to cause, any other person to commit any such offence—shall be liable, upon conviction, to the punishment of death, or to the punishment of transportation for life, or of imprisonment with hard labor for any term not exceeding fourteen years; and shall forfeit all his property and effects of every description."

Section II was a provision similar to that which had been inserted in the Act for the prevention, trial, and punishment of offences against the State on the Motion of the Honorable and learned Member opposite (Sir Arthur Buller) on Saturday last:—

"Whoever shall knowingly harbour or conceal any person who shall have been guilty of any offence mentioned in the preceding Sec-

tion, shall be liable to imprisonment, with or without hard labor, for any term not exceeding seven years, and shall also be liable to a fine."

These were the Sections which provided for the punishment of the offences dealt with by the Bill.

Section III provided that—

"It shall be lawful for the Governor-General of India in Council, from time to time, by order in Council, to empower every General or other Officer having the command of Troops in the Service of Her Majesty or of the East India Company, or any of such General or other Officers, to appoint General Courts Martial for the trial of any person or persons charged with having committed an offence punishable by this Act or by Section I or Section II of Act No. XI of 1857, and also to confirm and carry into effect any sentence of such Court Martial."

Section IV corresponded with Section II of Act VIII of 1857, which related to persons amenable to the Articles of War for the Native Army. It said:—

"Any General Court Martial, which may be appointed under the authority of this Act, shall be appointed by the Senior Officer on the spot, and shall consist of not less than five Commissioned Officers, the number to be fixed by the General or other Officer appointing the Court Martial. The Order in Council may direct that a General Court Martial to be appointed under the provisions of this Act shall consist wholly of European Commissioned Officers or wholly of Native Commissioned Officers, and in such case the Officer appointing the Court Martial shall determine whether the same shall consist wholly of European Officers or wholly of Native Officers."

The following were the remaining Sections of the Bill:—

"V. Sentence of death or other punishment, to which the offender is liable by Law, may be given by such Court Martial, if a majority of the Members present concur in the sentence; and any such sentence may be confirmed by, and carried into effect immediately or otherwise by order of, the Officer by whom the Court Martial shall have been appointed, or, in case of his absence, by the Senior Officer on the spot."

"VI. It shall be lawful for the Governor-General in Council to countermand or alter any Order in Council which may be issued under the authority of this Act."

"VII. It shall be lawful for the Governor-General in Council, or for the Executive Government of any Presidency or place, or for any person or persons whom the Governor-General in Council may authorize so to do, from time to time, to issue a Commission for the trial of all or any persons or person charged with having committed within any District described in the Commission, whether such District shall or shall not have been proclaimed to be in a state of rebellion, any offence punishable by Sections I and II of Act XI of 1857, or by this Act; or any other crime against the State; or murder, arson, robbery, or other heinous crime against person or property.

"VIII. The Commissioner or Commissioners authorized by any such Commission, may hold a Court in any part of the District mentioned in the Commission, and may there try any person for any of the said crimes committed within any part thereof, it being the intention of this Act that the District mentioned in the Commission shall, for the purpose of trial and punishment of any of the said offences, be deemed one District.

"IX. Any Court held under the Commission shall have power, without the attendance or futwa of a Law Officer, or the assistance of Assessors, to pass upon every person convicted before the Court of any of the aforesaid crimes any sentence warranted by Law for such crime; and the judgment of such Court shall be final and conclusive; and the said Court shall not be subordinate to the Sudder or other Court.

"X. If a Commission be issued under the authority of this Act, any Magistrate or other Officer having power to commit for trial within the District described in the Commission, may commit persons charged with any of the aforesaid crimes within such District for trial before a Court to be held under this Act.

"XI. Nothing in this Act shall extend to the trial or punishment of any of Her Majesty's natural born subjects born in Europe, or of the children of such subjects.

"XII. This Act shall not extend to the trial or punishment of any person for any offence for which he is liable to be tried by the Articles of War.

"XIII. The word "Soldier" shall include every person subject to any Articles of War.

"XIV. This Act shall continue in force for one year."

With reference to Section XI, Mr. Peacock explained that he had inserted it in consequence of a Clause in the Charter Act which provides that it shall not be lawful for the Governor General in Council, without the previous sanction of the Court of Directors, to pass any Law empowering any Courts of Justice, except those constituted by Royal Charter, to sentence to the punishment of death any of Her Majesty's natural-born subjects born in Europe, or the children of such subjects.

In conclusion, he observed it might be said that this Bill was a very stringent measure. He admitted that it was so; but the circumstances under which the country was placed at this moment required that very rigorous measures should be passed.

He proposed the Bill as a temporary measure only; and he had limited its

operation to one year. If any Honorable Member desired that that period should be reduced, he would have no objection to make the necessary alteration.

With these observations, he moved the first reading of the Bill.

The motion was carried, and the Bill read a first time.

MR. PEACOCK moved that the Bill be read a second time.

The motion was carried, and the Bill read a second time.

MR. PEACOCK moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

Sections I to III were passed as they stood.

Section IV being read—

GENERAL LOW said, the Section enacted that a Court Martial appointed under the Act should consist of not less than five Members; and that the Order in Council might direct that it should consist wholly of European, or wholly of Native Commissioned Officers. But it appeared to him it was quite possible that crimes of this nature might be committed at a Station so small that there might not be five European Officers or five Native Officers in it. To meet such cases, he should propose that it should be left open to the Governor-General in Council to direct in his Order in Council that the Court might consist partly of European and partly of Native Commissioned Officers, so as to secure the important object of bringing offenders to immediate trial and punishment.

MR. PEACOCK said he had no objection to the amendment proposed by the Honorable Member. The Section as it now stood, had been taken from Act VIII of 1857. At that time, it was considered that there were serious objections to forming Courts Martial for the trial of Native Troops partly of European and partly of Native Officers. This, however, was a Bill for the trial, not of persons amenable to the Articles of War for the Native Army, but of any person seducing or attempting to seduce Officers and Soldiers from their allegiance, or exciting or attempting to excite them to mutiny or rebellion, and he did not see any objection to a Court Martial assembled under the authority of the Act being composed either wholly of Europeans or wholly of Natives, or partly of Europeans and partly of Natives.

MR. PEACOCK then amended the Section by inserting in it the words "or partly of European Commissioned Officers and partly of Native Commissioned Officers," and it was then passed.

The remaining Sections of the Bill, with the Preamble and Title, were passed as they stood.

The Council having resumed its sitting, the Bill was reported.

MR. PEACOCK moved that the Bill be now read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. PEACOCK moved that General Low be requested to carry the Bill to the Governor-General for his assent.

Agreed to.

PORT-DUES (BOMBAY.)

MR. LEGEYT moved that the Bill "for the levy of Port-dues and fees in the Port of Bombay" be referred to a Select Committee consisting of Mr. Grant, Mr. Currie, and the Mover.

Agreed to.

PORT-DUES (KURRACHEE.)

MR. LEGEYT moved that the Bill "for the levy of Port-dues and fees in the Port of Kurrachee" be referred to a Select Committee consisting of Mr. Grant, Mr. Currie, and the Mover.

Agreed to.

PORT-DUES (TUNKARIA AND BROACH.)

MR. LEGEYT moved that the Bill "for the levy of Port-dues in the Ports of Tunkaria and Broach" be referred to a Select Committee consisting of Mr. Grant, Mr. Currie, and the Mover.

Agreed to.

PIRATICAL VESSELS (STRAITS SETTLEMENT.)

The following Message from the Governor-General was brought by Mr. Grant and read:—

MESSAGE No 104.

The Governor-General informs the Legislative Council that he has given

his assent to the Bill which was passed by them on the 23rd May 1857, entitled "A Bill to authorize the arrest and detention, within the Ports of the Settlement of Prince of Wales' Island, Singapore, and Malacca, of Junks or Native Vessels suspected to be piratical"

By order of the Right Honorable the Governor-General.

CECIL BEADON.
Secy. to the Govt. of India.

FORT WILLIAM,
The 30th May 1857.

OFFENCES RELATING TO THE ARMY AND AGAINST THE STATE.

The following Message from the Governor-General was brought by General Low and read:—

MESSAGE No. 106.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was this day passed by them entitled "A Bill to make further provision for the trial and punishment of certain offences relating to the Army, and of offences against the State."

By order of the Right Honorable the Governor-General.

CECIL BEADON.
Secy. to the Govt. of India.

FORT WILLIAM,
The 6th June 1857.

PORT-DUES (CALCUTTA.)

MR. CURRIE moved that a communication received by him from the Government of Bengal be laid upon the table and referred to the Select Committee on the Bill "for the levy of Port-dues and fees in the Port of Calcutta."

Agreed to.

The Council adjourned.

Saturday, June 13, 1857.

PRESENT:

The Governor-General, *President*, in the Chair,

Hon. J. A. Dorin,	Hon. B. Peacock,
Hon. the Chief Justice,	P. W. LeGeyt, Esq.
Hon. Major General J. Low,	E. Currie, Esq. and
Hon. J. P. Grant,	Hon. Sir A. W. Buller.

THE PRESS.

THE PRESIDENT said—Before the Council proceeds to the Orders of the Day, I ask permission to bring before it a subject of pressing and paramount importance. Those whom I have the honor to address are well acquainted with the present aspect of public affairs in the Northern parts of India. The general disaffection of the Bengal Army in the North Western Provinces; the lawlessness and violence of the evil-minded part of the population to which this disaffection has given opportunity and encouragement; the pillage, the heart-rending loss of life, and the up-rooting of all order in that part of the country, are painfully notorious. I will not dwell upon them. Neither will I trace the causes which have led to these calamitous results, or describe the means by which the Government is meeting and repressing them. But there is one quarter to which I desire to direct the attention of the Council—a quarter from which the evil influences which now pervade so many minds have been industriously put in motion, and to which a large portion of the discontent instilled into our troops and our ordinarily harmless and peaceable community, is attributable. I doubt whether it is fully understood or known to what an audacious extent sedition has been poured into the hearts of the Native population of India within the last few weeks under the guise of intelligence supplied to them by the Native Newspapers. It has been done sedulously, cleverly, artfully. Facts have been grossly misrepresented—so grossly, that, with educated and informed minds, the very extravagance of the misrepresentations must compel discredit. But to Native readers of all classes scattered through the country, imperfectly acquainted with the proceedings of the Government, and not well instructed as to what is passing even immediately around them, these misrepresentations come uncontradicted, and are readily credited.

In addition to perversion of facts, there are constant vilifications of the Government, false assertions of its purposes, and unceasing attempts to sow discontent and hatred between it and its subjects.

Again, opportunities have been taken to parade before the eyes of the inhabitants of the Capital, and of our soldiery and subjects elsewhere, a traitorous Proclamation put forth by those who are in arms against the Government in the North-Western Provinces, crying for the blood of Europeans, offering rewards for rebellion, and denouncing all who shall continue faithful to the Government.

I am speaking to a Body whose Members have more experience of the native character, and of the working of the native mind, than I possess. But it needs little of this to see that it is impossible that all this mischief can be a-foot and unrestrained without producing wide-spread disaffection, lamentable outbreaks, and permanent injury to the authority of Government.

Against such poisoned weapons, I now ask the Legislative Council to give to the Executive Government the means of protecting itself, its Army, and its subjects; and I know no means by which this can be effectually accomplished other than a Law which shall give to the Executive Government a more absolute and summary control over the Press than it now has in its hands. With this view, I propose to introduce a Bill this day; and, as a preliminary step, I move that the Standing Orders be suspended, in order that the Bill may be carried through its several stages, and passed forthwith.

The several provisions of the Bill will be read *in extenso* by the Clerk of the Council. The measure is framed upon the principle that no Press shall exist without a license from the Government; that the license shall be granted by the Governor-General in Council under such conditions as he may think fit; that, on the infraction of any of these conditions, it shall be in the power of the Governor-General in Council, and, in distant parts of the Empire, of local Governments to whom he may delegate the authority, to withhold such license, or, if one has been already granted, to recall it.

One of the Sections provides that the Bill shall have effect for one year, and for one year only. At the end of that period, the subject will again be before the Legislative Council, and the Legislative Council will know how to deal with it according to the circumstances of the moment.

It is also provided that the Bill shall be applicable, not only to Bengal, but to all India. The question involved is one which, in my opinion, deserves not only at the present juncture, but at all times, to be treated as an imperial one. It is a question in regard to which India should be ruled by one authority.

I also propose that the Act shall extend to all periodical and other publications, European as well as Native, whatever their condition or character.

The remarks which I have taken occasion to make with reference to the Native Press, I do not direct to the European Press. But I see no solid standing ground upon which a line can be drawn marking off one from the other when the question is to prevent the publication of matter calculated to work mischief at a crisis like this. For whilst I am glad to give credit to the conductors of the European Press for the loyalty and intelligence which mark their labours, I am bound by sincerity to say that I have seen passages in some of the papers under their management which, though perfectly innocuous, so far as European readers are concerned, may, in times like the present, be turned to the most mischievous purposes in the hands of persons capable of dressing them up for the Native ear. I am glad, then, I say, to admit that the Bill is not specially levelled at the European Press; but I do not see any reason, nor do I consider it possible in justice, to draw a line of demarcation between European and Native publications. The Bill, accordingly, applies to every kind of publication, whatever the language in which it may be printed, or the nation of the persons who are responsible for what is put forth in it.

I cannot conceal from the Council that I have proposed this measure with extreme reluctance. It is one which no man bred in the atmosphere of English public life can propose to those who are vested with the high authority of legislating for English dominions, without some feelings of compunction and hesitation. But there are times in the existence of every State in which something of the liberties and rights which it jealously cherishes and scrupulously guards in ordinary seasons, must be sacrificed for the public welfare. Such

The President

is the state of India at this moment. Such a time has come upon us. The liberty of the Press is no exception. And now, upon my responsibility as the Head of the Government of India, and with the unanimous support of the colleagues with whom I have the honor and satisfaction to act, I ask the Legislative Council to strengthen the hands of the Executive Government by investing it with the powers which will be given by the Bill which I here lay on the table.

His Lordship then moved that the Standing Orders be suspended, in order that he might carry the Bill through its several stages forthwith.

The motion was seconded by Mr. Dorin, and agreed to.

THE PRESIDENT moved that the Bill be read a first time.

THE CLERK read the Bill.

THE PRESIDENT moved that the Bill be read a second time.

The Motion was carried, and the Bill read a second time.

THE PRESIDENT moved that the Council resolve itself into a Committee on the Bill.

THE CHIEF JUSTICE said, he should venture to offer a few observations—which, perhaps, he ought rather to have made on the motion for the second reading—on the subject of this Bill. The gravity of the step which the Council was about to take could not be denied. It was called upon suddenly to suspend a privilege which had now been enjoyed for nearly a quarter of a century by the population of this country—a privilege to which all Englishmen were naturally and strongly attached. Having heard the statement of His Lordship to-day, he thought it right emphatically to declare that he was ready to take his share of the responsibility involved in the adoption of the measure. The freedom of the Press, like any other privilege, was to be prized only in so far as it conduced to the public good. That it did answer that end in ordinary times, he fully believed; and there was no privilege against the arbitrary abrogation of which he would more earnestly contend. But it was obvious from the statement made by His Lordship to the Council that, owing to circumstances unhappily within the knowledge of us all, we were now in no ordinary times. The Executive Government of this country then—those upon whom lay the burdensome duty of protecting the Empire against the dangers which beset it; a duty which, so far as one not connected with them might offer an opinion on the point, he should say they had faithfully and ably discharged—told the Council that, effectually to meet the exigency of the times, it required the extraordinary powers to be conferred by this Act. It seemed to him that this Council would be taking upon themselves a far greater responsibility than that which they would incur by passing this Bill, if they should refuse those powers to the Government of the country in this momentous crisis. He believed that all of those who had hitherto enjoyed the privilege, and were well affected to Government, whether European or Native—for he would make no distinction between Europeans and that great body of Natives which was well affected towards the Government, and which, he believed, included all who had any thing to lose, or had the wit and knowledge to see that nothing like order or good Government could proceed from any Power set up by a faithless and turbulent soldiery—he believed, he said, that all who were well affected to Government, whatever value they might set on the freedom of the Press, would as readily submit to the temporary loss of that privilege as he hoped they would submit to any other sacrifice either of purse or person which, at a moment like this, the necessities of the country might require. At all events, he would repeat his readiness to share in the responsibility of granting the extraordinary powers for which Government asked; of the necessity for which, however much he regretted it, he could not, after what they had heard, entertain any doubt.

The Motion to go into Committee on the Bill was then agreed to.

Section I being read—

MR. LEGEYT asked if the words of the Section would include a lithographic press.

THE CHAIRMAN said, the intention was to include lithographic presses, and the words "or other materials for printing" would have that effect.

After some conversation, it was

agreed that, to prevent any doubt on the question, words should be inserted in the Interpretation Clause defining the word "printing" to include lithographing.

The Section was then passed as it stood.

Sections II to VI were passed as they stood.

Section VII being read—

MR. LEGEYT moved that the words "or the Executive Government of any Presidency" be added to the words "the Governor-General of India in Council" in the first line. That would extend the power of checking the evil against which the Section was levelled. In the neighborhood of Madras, for instance, there was Pondicherry, a large French town, and in Bombay there was Goa, a large Portuguese city, in the latter of which, to his knowledge, newspapers were published in which, unless the local Governments were invested with the power of restraining them contained in this Section, objectionable publications might be circulated.

He would take this opportunity of mentioning that it was only that morning that he had read in a Bombay newspaper an extract from a leading native journal which had struck him as a most inflammatory production He quite believed that the Editor himself had acted from no disloyal motives, for he was one extremely well affected towards the British Government; but he had evidently lent his paper, in this instance, to an attempt to vilify the Mahommedans, and excite hatred towards them in the eyes of the Government and the Public.

THE CHAIRMAN said, there could be no objection whatever to investing the Executive Government of each Presidency with the power of prohibiting seditious matter from being published in the local prints. The Section as it stood had been framed under the impression that it was more likely that such publications would be put forth in this part of India than in Madras or Bombay. But the Honorable Member for Bombay had shewn that there was the same opportunity in that Presidency and in Madras for the establishment of a Press upon foreign soil, and he (the Chairman) could see no objection to extending to the local Governments the power given by this Section to the Governor-General of India in Council.

MR. LEGEYT'S Motion was then agreed to.

MR. LEGEYT moved that the words "or the territories subject to the said Government," be inserted after the words "within the said territories" in the 6th line of the Section.

Agreed to.

MR. PEACOCK said, there existed some doubt whether the penalty attached to the offence created by the Section, was sufficiently large. The Section provided that whoever should knowingly import, publish, or circulate, or cause to be imported, published, or circulated, books or papers prohibited by the Government, should be liable for every such offence to a fine not exceeding one thousand Rupees or, in default of payment, to imprisonment for a term not exceeding one calendar month. It had been suggested to him, and he agreed in thinking, that such a punishment was too small. The punishment for importing into this country books prohibited by the Government ought to be at least as much as the punishment awarded in England for a misdemeanor—namely, fine and imprisonment. By Act XI of 1835, a much higher penalty was provided for a much smaller offence than that which would be committed by a violation of the prohibition under consideration—namely, a fine of five thousand Rupees, and imprisonment for a term not exceeding two years, for publishing a book or newspaper without the name of the Printer legibly printed upon it. He should accordingly move that the words "one thousand Rupees, and, in default of payment, to imprisonment for a term not exceeding one calendar month" be omitted from the Section, in order that the words "five thousand Rupees, or to imprisonment not exceeding two years, or to both" might be substituted for them.

The Motion was agreed to, and the Section then passed.

Section VIII being read—

MR. LEGEYT moved that the following words be inserted at the commencement of the Section:—

"The word 'printing' shall include lithographing."

Agreed to.

With reference to the definition in the Section that the word "Magistrate" should "include a person exercising the powers of a Magistrate, and also a Justice of the Peace," and the provision that "every person hereby made punishable by a Justice of the Peace may be punished upon summary conviction" —

MR LEGEYT asked if it would not give Magistrates in the Mofussil power over Europeans.

THE CHAIRMAN replied, he thought that it would.

MR. LEGEYT observed that, ordinarily, Mofussil Magistrates sitting as Magistrates had no jurisdiction over Europeans.

THE CHIEF JUSTICE said, the Honorable Member had fallen into an error which was not uncommon, in supposing that it was as Justices of the Peace that the Mofussil Magistrates acted in those cases in which they had a power of summary conviction over British subjects. He apprehended that, as Justices of the Peace, they could only enquire and commit for trial; but that whenever any Statute or Act gave them power of summary conviction over British subjects—as, for instance, the Statute of George III, which gave them such a power in cases of assault upon Natives —it gave it to them in their ordinary character of Magistrate. He doubted whether, if this power was intended to be given, it ought not to be given by express words.

MR. GRANT said, the Council had passed a great number of Acts giving Magistrates power in the same way over all classes of persons within their geographical jurisdiction; and he could see no reason why this Act should give it in express words.

MR. PEACOCK said, there could be no doubt that the words "any person" in the Section included European British subjects. Where Acts had said that any person committing an offence should be liable to punishment, but did not point out the Authority which was to punish, the ordinary Courts had no power to punish an offender who was a European British subject. But where, as in this case, an Act said that any person offending against its provisions might be punished by a Magistrate, and that the word "Magistrate" should include a Justice of the Peace, and that every person thereby made punishable by a Justice of the Peace, might be punished upon summary conviction, it clearly gave Magistrates and Justices of the Peace a jurisdiction over European British subjects.

MR. CURRIE said, he thought that, in the Post Office Act, there was a provision that the words "any person" should include "a British subject." But the question had been considered in connection with the Suburbs of Calcutta Police Bill in Select Committee, and it was there determined that the words were unnecessary.

MR. GRANT said, his only objection to the insertion of the words in this Act was that it would throw a doubt on other Acts in which no such words were used.

The Section was passed as amended on the Motion of Mr. LeGeyt.

Section IX was passed after an amendment.

Before Section X was proposed—

THE CHIEF JUSTICE said, he wished to introduce a new Clause, which, he believed, had the concurrence of the Honorable and learned Member opposite (Mr. Peacock). This Act would take effect the moment it received the assent of the Governor-General. It might be necessary that there should not be, in this instance, that interval of time which it might be expected should elapse in ordinary cases between the passing of an Act effecting a great change in the Law and the period at which persons should become subject to the penalties of the new Law. But unless this Act contained such a Section as that which he was about to propose, it would be open to any person to lay an information before a Magistrate against any person publishing a newspaper without a license (which he might have had no time to obtain), and the Magistrate might feel bound to act on that information. He, therefore, moved that the following Section be inserted after Section IX:—

"No person shall be prosecuted for any offence against the provisions of this Act, without an order of the Governor-General in Council, or the Executive Government of the Presidency in which the offence shall be committed, or the person authorized under the provisions of this Act to grant licenses."

MR. PEACOCK said, he thought that the amendment was too general,

and he should suggest that the words "within fourteen days after the passing of the Act" be inserted after the words "against the provisions of the Act." Of course, it was not intended that persons should be subject to the penalties of the Act until they should have had time to become acquainted with its provisions—unless, indeed, they should use the Press for seditious purposes; in which case the Government would have the power to punish them forthwith.

THE CHIEF JUSTICE adopted the suggestion, and the Section, so amended, was agreed to.

Section X was agreed to.

MR. GRANT said, he had an amendment to move in Section 1, which, as the Standing Orders had been suspended, it was open to him to do without recommitting the Bill. His object was to make the punishment provided by that Section for keeping an unlicensed printing press correspond with the punishment provided by Section VII, as it now stood, for the importation or circulation of prohibited books or newspapers. At present, the penalty under the first Section was a fine not exceeding one thousand Rupees or, in default of payment, imprisonment for a term not exceeding six months; whereas the penalty under Section VII, which was directed against what was perhaps a minor offence, was a fine not exceeding five thousand Rupees, or imprisonment for a term not exceeding two years, or both. He therefore moved that the words "one thousand Rupees, and, in default of payment, to imprisonment for a term not exceeding six calendar months" be left out of Section I, in order that the words "five thousand Rupees, or to imprisonment not exceeding two years, or to both" might be substituted for them.

Agreed to.

The Preamble and Title were passed as they stood.

The Council having resumed its sitting, the Bill was reported.

THE PRESIDENT moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

THE PRESIDENT then gave his assent to the Bill, and left the Council Chamber.

THE VICE-PRESIDENT took the Chair.

HEINOUS OFFENCES AGAINST PERSON OR PROPERTY.

MR. PEACOCK said, it was with great regret that he felt bound to ask the Council to add the punishment of death to a class of crimes in addition to those for which they had lately provided that punishment. He had hoped until lately that, as soon as the Penal Code should be passed, there would be only two offences punishable with death—namely, waging war against the Government, and murder. But it was well known that, in some districts, a very large number of evil-disposed persons, taking advantage of the present disturbed state of the country, were going about and committing crimes of the greatest atrocity against person and property openly, and, he might almost say, in defiance of Government. This was the case especially, as the Honorable Member on his right (General Low) reminded him, in the district of Benares. To such an extent were these enormities carried that he believed it to be absolutely necessary that extraordinary measures should be adopted, and that the Authorities should be armed with the power of speedy and exemplary punishment. Indeed, it appeared to him that they must either allow these offences to be committed with impunity, or they must subject the offenders to the punishment of death. For his own part, he felt no hesitation in selecting the latter alternative. He had, therefore, prepared an Act which provided that, in any district where Martial Law was proclaimed, or to which the Governor-General in Council might extend the provisions of the Act, any person guilty of robbery, arson, or other heinous offence against person or property, should be punishable with death. Extraordinary times required extraordinary measures. He did not propose that these offences should be punishable with death in every district; but that they should be so punishable only in those districts in which Martial Law should have been or should be proclaimed, or to which the Governor-General in Council might extend the Act. Nor did he propose

that the Act should be permanent. He proposed that the present Act, like that which was passed by the Council on Saturday last, should have effect for only one year.

The first Section provided that—

"Whoever shall commit or attempt to commit the crime of arson, robbery, or other heinous crime against person or property, in any district or place in which Martial Law hath been or shall be established, or in any district or place to which this Act shall be extended by Order of the Governor-General of India in Council, shall be liable, on conviction, to the punishment of death, or to the punishment of transportation for life, or of imprisonment with hard labor for any term not exceeding fourteen years; and shall forfeit all his property and effects of every description."

The crime of murder was already punishable with death. But robbery, unless attended with murder, was punishable only with transportation for life or imprisonment with hard labor.

He also proposed that every person who should be guilty of murder, or of any of the other offences mentioned in Section I, might be tried by a Court Martial, or by a Special Commissioner appointed under the Act passed last week, or by the ordinary Courts of Justice. At present, Courts Martial could only try persons taken in the commission of offences against the State. But, in these times, it was essentially necessary that individuals guilty of heinous crimes against person or property should be liable to be tried either by Courts Martial or under a Special Commission. The second Section of the Bill, accordingly, contained a provision to that effect.

The third Section exempted British-born subjects and their children from the operation of the Act.

He should conclude by moving that the Standing Orders be suspended, in order that he might bring in and pass the Bill through its several stages.

The Motion was seconded by General Low, and agreed to.

On the Motion of Mr. Peacock, the Bill was read a first and a second time, and committed.

Section I was passed after an amendment.

MR. PEACOCK moved that a Section defining what the words "heinous offence" should be deemed to mean under the Act, be placed after Section I.

Agreed to.

The remaining Sections were agreed to as they stood.

The Preamble and Title were severally passed after a verbal amendment.

The Council having resumed its sitting, the Bill was reported.

MR. PEACOCK moved that the Bill be now read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. PEACOCK moved that Mr. Grant be requested to take the Bill to the Governor-General for his assent.

Agreed to.

MR. GRANT returned to the Council Chamber with the above Bill, and the Vice-President announced that the Governor-General had signified his assent thereto.

JOINT-STOCK COMPANIES.

MR. PEACOCK postponed the Motion (of which he had given notice for this day) for a Committee of the whole Council on the Bill "for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the members thereof."

SMALL CAUSE COURTS.

MR. LEGEYT presented the Report of the Select Committee on the Bill "to amend Act IX of 1850."

The Council adjourned.

Saturday, June 20, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*,

Hon. the Chief Justice,	P. W. LeGeyt, Esq.,
Hon. Major General J. Low,	E. Currie, Esq., and
Hon. J. P. Grant,	Hon. Sir A. W. Buller.
Hon. B. Peacock,	

JOINT-STOCK COMPANIES.

THE CLERK presented a Petition from the Bombay Chamber of Com-

merce relative to the Bill "for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the Members thereof." The Petitioners prayed that Clause 73 of the Rules for the management of Companies in the Bill might be so amended as to provide that the Auditors should be appointed by the Government, and not by the shareholders.

MR. PEACOCK said, it was his intention to ask the Council, when the Order of the Day for the committal of the Bill was called on, for leave to postpone its consideration. The Mail had been delayed, and the Council would have considerable other business to go through to-day. Meanwhile, he should move that the Petition presented be printed.

Agreed to.

POLICE AND CONSERVANCY (SUBURBS OF CALCUTTA, &c.)

MR. CURRIE presented the Report of the Select Committee on the Bill "to make better provision for the order and good government of the Suburbs of Calcutta and of the Station of Howrah."

BOMBAY UNIVERSITY.

MR. LEGEYT presented the Report of the Select Committee on the Bill "to establish and incorporate an University at Bombay."

RECOVERY OF RENTS (BENGAL.)

MR. CURRIE postponed the Motion (which stood in the Orders of the Day) for the first reading of a Bill to amend the Law relating to the recovery of rent in the Presidency of Fort William in Bengal. The Motion had been inserted in the Orders of the Day by mistake.

PORT-DUES AND FEES (MADRAS PRESIDENCY.)

MR. CURRIE moved the second reading of the Bill "for the levy of Port-dues and fees in Ports within the Presidency of Fort St George, and to provide against the discharge of ballast in certain Ports within the said Presidency." He had mentioned in introducing the Bill that, in all probability, it would not be considered advisable to pass the Bill as submitted. But he thought that it would be as well to read it a second time, and refer it to a Select Committee. The Select Committee would take the subject into consideration, and determine whether an entirely new Bill should be framed, or whether the present one should be so altered as to be accepted by the Council.

THE CHIEF JUSTICE said, he did not very much object to the second reading, but he thought that the Bill required to be divided into two. It provided—as other Bills had done—a rate of fees for certain Ports which were to be subjected to the general Harbor Act. It also proposed to continue in certain other Ports, which were not to be subjected to the general Act, the existing rate of fees, and extended to them particular provisions of the general Act. The Government of Madras might possibly have good reasons for keeping some of their Ports out of the scope of the general Act; but assuming that it was right and necessary to do so, it appeared to him that it would be very much better to carry out those two objects by two separate Bills—that the Act which should define the Port-dues to be taken at the Ports subject to the general Act should be a separate Act, and should form part of that body of Acts which had recently been proposed for Bombay, Kurrachee, and other Ports, as supplementary to the general Act.

MR. GRANT said, he should feel much obliged if the Honorable Member for Bengal would consent to postpone the second reading of this measure for one week. He had doubts of the expediency of the Bill, but he had not had time to consider it fully.

MR. CURRIE said, he had not the slightest objection to postpone the second reading. He might mention, at the same time, that he quite concurred in the observations which had fallen from the Honorable and learned Chief Justice.

It seemed to him that there were two courses open to the Council—either to read the Bill a second time now, and

refer it to a Select Committee, who would probably cut out of it that part upon which the Honorable and learned Chief Justice had remarked as being not properly supplemental to the Harbor Act, and which might form a separate Bill; or to refer the Bill to a Select Committee without reading it a second time, for the purpose of reporting upon it before it was published. He should have preferred that the Bill were read a second time and referred to a Select Committee, in the usual course; but he was quite ready to accede to the request of the Honorable Member who had spoken last, and should defer his Motion until next Saturday.

The Motion was, by leave, withdrawn, and the second reading of the Bill postponed until Saturday next.

JOINT-STOCK COMPANIES.

MR. PEACOCK postponed his Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill "for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the Members thereof."

MUTINY AND DESERTION (NATIVE ARMY).

MR. PEACOCK moved that the Standing Orders be suspended, in order that he might bring in and carry through its several stages a Bill to provide "for the apprehension and trial of Native Officers and Soldiers for mutiny and desertion."

He said, it was very necessary that some new provision should be made for the trial of Officers and Soldiers belonging to the Native Army who were guilty of mutiny or desertion. At present, persons amenable to the Articles of War could not be tried for military offences except by Courts Martial. Sentence of death or of transportation could not be passed except by General Courts Martial convened according to the Articles of War, consisting of not less than thirteen Commissioned Officers, or, according to Act No. VIII of 1857, consisting of not less than five European, or five Native Commissioned Officers. Many of the mutineers and deserters were going about the country committing acts of depredation and violence, and rendering themselves a terror to the people around them. Under existing circumstances, Courts Martial composed of Native Officers for the trial of such offenders would, in most cases, be out of the question. European Officers, on the other hand, were fully engaged in the performance of other duties; and, in many cases, it would be impossible to send the offenders to a Military station for trial by Court Martial. He therefore proposed to give to every Sessions Judge, and to every person exercising the powers of a Sessions Judge, and to every person whom the Governor-General in Council, or the Executive Government of any Presidency or place, or the Chief Commissioners of the Punjaub and Oude respectively, or the Commissioner of Nagpore, might invest with the power, authority to try such offenders, and to pass upon them the sentences to which they were now liable under the Articles of War—that was to say, in the case of Officers, sentence of death, or of transportation for life; and in the case of Soldiers, sentence of death, or of transportation for life, or of imprisonment with or without hard labor. He had thought it necessary to define the punishment to be awarded, because the Articles of War might not be well known to Civilians. But there was one punishment to which the Articles of War subjected mutineers and deserters, which he thought it would not be right to authorize Civil Officers in the Mofussil to inflict—namely, dismissal from the Service. It appeared to him that, under existing circumstances, that punishment was wholly inadequate to the offence; and the offender might as well go unpunished as have such a sentence passed upon him. If there should be an exceptional case requiring only that punishment, it was not necessary to provide for it by the present Bill: and it would be better that the offender in such a case should be left to a Court Martial, and be sent to a Military station for trial. According to the Articles of War for the Native Army, any Officer or Soldier guilty of mutiny or desertion, was liable—if an Officer, to suffer death, or transportation for life, or dismissal from the Service; and if a Soldier, to suffer death, or transportation for life, or im-

prisonment with or without hard labor, and with or without solitary confinement, or dismissal from the Service. For the reasons which he had already stated, he had omitted from this Bill the power of sentencing to dismissal from the Service, and he had not considered it necessary to introduce those provisions of the Articles of War which related to solitary confinement. He thought that there would be no means of carrying out such a sentence in those stations where mutineers or deserters were likely to be tried under the Act.

The Bill also provided that all sentences should be final and conclusive, and that sentence of death might be carried into execution immediately.

As the Bill empowered only Sessions Judges, and persons exercising the powers of Sessions Judges, and such others as might be invested with authority for that purpose by the Governor-General in Council or the Executive Government, to try for mutiny or desertion, it might be necessary that the Governor-General in Council, or the Executive Government of a Presidency, should have power to authorize any person to issue Commissions for the trial of such offences; and, accordingly, the Bill contained a provision to that effect.

There was no provision in the Articles of War for Native troops expressly authorizing Police Officers or others to arrest persons guilty of mutiny or desertion. He thought there could be no doubt that Police Officers would have that power without any such express provision in this Act. He observed, however, that by the Mutiny Act for the Queen's troops, power was expressly given to Police Officers to arrest persons suspected of mutiny or desertion. Therefore, to prevent any doubt in the matter, he had inserted in this Bill a Section enacting that, upon reasonable suspicion that any person is a mutineer or deserter, and subject to the Articles of War for the Native Army, a Police Officer or any other individual might apprehend him without warrant.

By a subsequent Section, he had provided that a person apprehended as a mutineer or deserter under the Act, should be conveyed without delay before a Magistrate, or an Officer exercising any of the powers of a Magistrate; and that, in the meantime, he should be detained in custody. If the Magistrate or other Officer should be satisfied that the prisoner was a mutineer or deserter, and subject to the Articles of War for the Native Army, he would have power either to send him to the Commanding Officer of some Military station, to be dealt with according to Law; or, if he should see good and sufficient reason for so doing, to commit him for trial before any Officer or other person having jurisdiction under the Act; or, if he should be authorized under the provisions of the Act to try for mutiny or desertion, he might, if he thought fit, himself proceed to try the offender forthwith.

He had also thought it right to introduce into the Act the provisions of Sections V and VI of Act XI of 1856. Those Sections authorized warrants to be issued for searching houses and other places in which there might be reasonable grounds for supposing that any deserter from the European troops was concealed. When that Act was passed, there was no idea that any such provision would be necessary for our Native troops. But there could be little doubt now that that power should be extended to deserters from the Native Army. He had, accordingly, extended by this Bill the provisions of Sections V and VI of Act XI of 1856 to all Officers, Soldiers, and others amenable to the Articles of War for the Native troops.

Further, he had inserted a Section by which all Zemindars, Talookdars, and other persons who were declared by Regulation VI of 1810 of the Bengal Code to be accountable for the early communication of intelligence respecting the resort to their estate of the classes of offenders therein specified, would be accountable for the early communication of intelligence of the resort to any place within the limits of their estates of any person against whom there should be reasonable suspicion of his having been guilty of mutiny or desertion; and all the provisions of the Regulation would have the same force and effect as if persons guilty of mutiny and desertion had been specially included in the classes of offenders specified therein. The classes of offenders specified in the Regulation he referred to, were dacoits, and robbers,

Mr Peacock

and others. It was important that Zemindars and other landholders in the Mofussil should be bound to give information of the resort to their estates of mutineers and deserters, in order that they might be apprehended, and might not be allowed to escape the punishment they deserved.

It appeared to him that the provisions contained in this Bill were not at all too severe, and that they were absolutely required for the purpose of making a severe example, and for the safety of the country. His own opinion was, that, in the present state of affairs, the severest punishment should be inflicted upon all mutineers and deserters from the Native Army, unless they could prove circumstances in mitigation. Others might possibly entertain a different opinion. This Act, however, would not compel the Civil Authorities to pass the severest sentence. In this respect, the question as to the amount of punishment to be inflicted must be left, as in other cases, to the discretion of the Judge, after taking all the circumstances of each particular case into consideration. The Act would allow him to pass sentence of death, or of transportation for life, in the case of Officers; and in the case of Soldiers. either sentence of death, or of transportation for life, or of imprisonment with or without hard labor for any term of years.

The Act was one designed for the exigency of the times, and need be only of a temporary nature. He had, therefore, provided that it should have effect for one year.

GENERAL LOW seconded the Motion that the Standing Orders be suspended.

Agreed to.

MR. PEACOCK moved that the Bill be read a first time.

THE CLERK read the Bill.

MR. PEACOCK moved that the Bill be read a second time.

The Motion was carried, and the Bill read a second time.

MR. PEACOCK moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

Section I being read—

MR. CURRIE said, he was doubtful about making the offence of simple desertion punishable with death or transportation for life. Hitherto, simple desertion from the Native Army had scarcely been treated as any offence at all, and he imagined that several of the persons who had recently left their Regiments could hardly be considered fit subjects for the punishment of death or transportation.

MR. LEGEYT said, the same objection had occurred to him when the Section was being read; but, on consideration, he thought that the discretion which the Bill gave to Magistrates to send up the offender to a Military Station to be tried by Court Martial which might award the punishment of dismissal from the Service, did away with the objection. The Magistrate would take that course if it should appear to him that there were extenuating circumstances in the case.

MR. PEACOCK said, the punishment under the Articles of War for desertion by Native Officers was death, or transportation for life, or dismissal from the Service. It had appeared to him that it would not be right, in these times, to allow Sessions Judges or Magistrates, or others exercising the powers of such officers, to pass sentence of simple dismissal from the Service upon a native Officer or Soldier who was guilty of mutiny or desertion. As the Honorable Member for Bombay had observed, if the Magistrate or other Officer before whom a prisoner should be brought upon a charge of mutiny or desertion, should think that the punishment of death, or of transportation for life, was too severe to be inflicted under the particular circumstances of the case, he might send the prisoner to some military station, and there the prisoner would be tried by a Court Martial, which might award sentence of dismissal from the Service if it thought fit. Or if any Sessions Judge or other person who might pass sentence of death or transportation for life upon any Officer for mutiny or desertion should see grounds for recommending him to mercy, he might send up a report of the case, together with any remarks or recommendation to mercy, to the Governor-General in Council. The Governor-General in Council might, in his (Mr. Peacock's) opinion, without any express provision in the Bill, commute the sentence to any less punishment, or

pardon the offender, if he should deem the case a proper one for the extension of mercy. This he could do under the general powers now vested in him by Law. By the Articles of War, the Commander-in-Chief had the power of commuting sentences of death or transportation; and if the Honorable Member wished it, he (Mr. Peacock) had no objection to insert in this Bill a Clause conferring a similar power on the Governor-General in Council and the Executive Governments of Madras and Bombay. But he thought it objectionable to give Sessions Judges and Magistrates in the Mofussil the power of sentencing to mere dismissal from the Service. If mutineers and deserters from the Native Army were to be subjected to no greater punishment than that, they would go about the country committing every kind of enormity, making themselves the terror of the peaceful population, and inducing others to follow their example. Indeed, dismissal from the Service would place the offenders in the same position precisely as if they were allowed to remain at large without any trial at all. In short, he thought it would be better not to try them than to pass such a sentence upon conviction.

GENERAL LOW said, he thought it very desirable that such a provision as that which the Honorable and learned Member had just suggested should be inserted in the Bill.

THE CHIEF JUSTICE said, he thought that it ought to be made perfectly clear that the Civil Officer exercising the new jurisdiction given by this Bill might suspend the execution of a sentence until the pleasure of the Government as to the remission or execution of that sentence should be known. But he also thought that that should be done in this Act without any reference to the Articles of War, or to any analogous power of the Commander-in-Chief; because Courts Martial were bound in every case, before their proceedings could become final, to send them up for revision. If it were simply expressed in the Section that it should be in the discretion of the Civil Officer to send up a case for the exercise of the prerogative of mercy, or for commutation of the sentence, that would be all that was required. He thought with the Honorable and learned Member opposite that it was idle to give to those who were to receive the jurisdiction the power of dismissing from the Service. The only justification for the Act was the necessity which existed of enforcing stringently the provisions of the Law against mutiny and desertion. It was to be presumed that dismissal from the Service was precisely what a deserter was seeking by his own act; and that, therefore, it would be no punishment to him at all.

MR. PEACOCK moved that the following words be added to the Section:—

"The Sessions Judge or other Officer by whom the sentence shall be passed, may, if he think proper, report the case to the Governor-General in Council, or to the Executive Government of the Presidency, together with any remarks or recommendation which he may think fit to make thereon; and the Governor-General in Council, or the Executive Government of the Presidency, may either pardon the offender, or commute the sentence to any less punishment.

The Motion was agreed to, and the Section then passed.

Sections II to V were passed as they stood.

Section VI being read—

THE CHIEF JUSTICE said, it appeared to him that, as the Act, which would be passed without the usual publication, was to take effect immediately, and this Section imposed a new liability on landholders, some time should be fixed as that from which they should first become subject to that liability. He should therefore move that the following Proviso be added to the Section:—

"Provided that no proceeding shall be taken against any Zemindar, Talookdar, or other person by virtue of this Section for anything done or omitted to be done by him within fourteen days after the passing of this Act."

He did not know whether it was intended that the Act should apply to any Presidency other than Bengal. He presumed that it was not, for the Regulation referred to in the Section was limited to Bengal; and in fourteen days, the passing of this Act would be known all over Bengal.

The Motion was agreed to.

MR. LEGEYT said, the Section, as it now stood, was, no doubt, very desirable for that part of the country to

which it was intended to apply, and to which, he hoped, all necessity for its application would be restricted. But it might be that this, which was a general Act, might be extended beyond the territories subject to Bengal; and in that case, it would be found that some of the classes of persons defined in the Bengal Regulation did not exist in the other Presidencies. Looking at the spirit of this provision, he would ask the Council what objection there could be to making it general, and rendering it incumbent upon every person to give information of the concealment of a deserter or mutineer. All knew that, by the Law of England, misprision of felony was a highly penal offence. Then, why not make concealment of mutineers or deserters punishable in the persons concealing, whatever their class might be, instead of making it punishable only in the particular class specified in the Section? He should, therefore, propose that all the words at the commencement of the Section before the words "hereby declared to be accountable" be left out, in order that the words "every person is" might be substituted for them.

MR. GRANT said the Section as it stood would not apply out of Bengal at all. Those only who are bound by the Bengal Regulations to give notice of dacoits, robbers, and other offenders of that class, would be bound by this Act to give notice of mutineers and deserters—and none others. He thought it better that this should be so. The Council was legislating now with great rapidity. They knew that in Bengal certain classes holding certain tenures of land are bound, and have always been bound since the commencement of our rule, as an incident of their tenure, to assist the Police in the apprehension of criminals of a particular order. But he was not prepared, on the moment, to extend this liability to Presidencies in which it does not now exist. As to them, the Council would, in fact, be legislating very much in the dark; and even if he were satisfied that it would be right to impose the same obligation upon certain classes in the other Presidencies—of which he could not feel sure—he did not think the Council was in a position to frame off-hand proper wording for the purpose. He, therefore, thought that the Section should be left as it stood, inapplicable to Madras and Bombay.

The Section was passed as amended on the Motion of the Chief Justice.

The remaining Sections were passed as they stood.

The Preamble was passed after the insertion of the word "temporary" between the words "to make" and "provision" in the first line.

The Title was passed after the insertion of the word "temporarily" between the words "to provide" and "for the apprehension" in the first line.

The Council having resumed its sitting, the Bill was reported.

On the Motion of Mr. Peacock, the Bill was then read a third time, and General Low was requested to take it to the Governor-General for his assent.

GENERAL LOW having returned to the Council Chamber with the Bill, the Vice-President announced that the Governor-General had given his assent thereto.

MADRAS UNIVERSITY.

MR. LEGEYT moved that the Bill "to establish and incorporate an University at Madras" be referred to a Select Committee consisting of the Chief Justice, Sir Arthur Buller, and the Mover.

Agreed to.

MR. LEGEYT moved that the Standing Orders be suspended to enable the Select Committee to report on the above Bill within eight days.

THE CHIEF JUSTICE seconded the Motion.

Agreed to.

THE INDIAN PENAL CODE.

MR. CURRIE moved that a communication received by him from the Government of Bengal relating to the exposure and desertion of children in the Soonderbuns, be laid upon the table and referred to the Select Committee on the Indian Penal Code.

Agreed to.

The Council adjourned.

Saturday, June 27, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President.*

Hon. the Chief Justice,	P. W. LeGeyt, Esq.
Hon. Major General J. Low,	E. Currie, Esq. and
Hon. J. P. Grant,	Hon. Sir A. W.
Hon. B. Peacock,	Buller.

VOLUNTARY OATHS, AFFIDAVITS, AND DECLARATIONS.

THE CLERK reported that he had received from the Home Department a communication from the Government of Fort St. George on the subject of administering voluntary oaths and attesting affidavits and declarations in India.

THE CHIEF JUSTICE moved that the communication be printed.

Agreed to.

MADRAS UNIVERSITY.

MR. LEGEYT presented the Report of the Select Committee on the Bill "to establish and incorporate an University at Madras."

GANJA (BOMBAY.)

MR. LEGEYT moved the first reading of a Bill "relating to the sale of Ganja in the Presidency Town of Bombay." Under Act IV of 1857, which the Council would recollect as the Bombay Tobacco Act, the Laws under which a special duty was levied on the importation of Ganja into the Presidency Town of Bombay, and also the rules regulating the grant of licenses and the retail sale of the article there, had been repealed. Since then, there had been no Law on the subject. When the Tobacco Bill was first proposed last year, the Government of Bombay purposely omitted, in the Draft which they sent round, all mention of Ganja, because they intended to provide for its sale, with that of other intoxicating drugs, under the provisions of Act III of 1852 and Act II of 1841. It had been since discovered, however, that neither of those Acts applied to the Presidency Town of Bombay; and it was therefore, necessary to have further legislation on the subject, if any legislation were deemed requisite on it at all.

Formerly, the special duty on the importation of Ganja into Bombay was levied, and licenses to sell Ganja were granted, under Chapters V and VI of Regulation XXI of 1827 of the Bombay Code. But besides those provisions, Act III of 1852 prescribed rules for granting licenses for the sale in the Presidency of Bombay, but outside the Presidency Town, of Bhang, Ganja, and other intoxicating preparations. Section X of the Act provided that—

"It shall not be lawful, in any part of the Territories subject to the Government of Bombay, to manufacture or prepare for sale, or sell directly or indirectly, any intoxicating drugs or materials, or any intoxicating drink or preparation manufactured from Bhang, Ganja, Grain, Opium, or other materials, of what nature or description soever, except under a license from the Collector of the Zillah; and it shall be competent to the Collector to refuse or to recall such license whenever he shall deem it expedient; and every such license, when granted, shall specify the name of the drug, material, drink, or preparation so authorized to be manufactured or sold, the place or district of manufacture or sale, and the length of time for which such license is to run, and any other terms or conditions which the Governor of Bombay in Council may from time to time deem it expedient to require; and such fees shall be demanded, from time to time, on the grant of such licenses, as the said Governor in Council may sanction."

Section XII of the Act provided the penalty which might be imposed on persons offending against the Act, or against the terms of the license. It said—

"All persons offending against, or aiding others in offending, directly or indirectly, against the provisions of this Act, or committing a breach of any of the conditions of a license to be granted under this Act, or obstructing Officers or others in the execution of their duties connected with any of its provisions, shall be punished by fine not exceeding Rupees five hundred, to be commuted, in default of payment, to imprisonment not exceeding six months; and any person having in his possession intoxicating drinks or preparations manufactured contrary to the provisions of this Act, or for which he is unable satisfactorily to account, shall be deemed to be possessed of them illegally, and shall be subject to the penalties above specified."

Section XIV gave power to the Collector of the Zillah "to seize and destroy all unlicensed liquor, preparations, drugs, or materials, and all unlicensed stills; and to sell the same, if deemed expedient, on behalf of Government."

The Bill which he now proposed provided for the extension of the pro-

visions of Act III of 1852 to the Presidency Town of Bombay, and gave to the Collector of the Land Revenue of Bombay the same powers, in respect to Ganja, that that Act conferred on the Zillah Collectors.

The Papers which he had received from the Bombay Government in relation to the subject, would be printed as annexures to the Bill.

The Bill was read a first time.

PORT-DUES AND FEES IN MADRAS.

MR. CURRIE moved the second reading of the Bill, "for the levy of Port-dues and fees at Ports within the Presidency of Fort St. George, and to provide against the discharge of ballast in certain Ports within the said Presidency."

MR. GRANT said, he was very much obliged to the Honorable Mover of the Bill for having postponed the second reading, in order to enable him to examine the Bill more fully than he had been able to do before the last Meeting of the Council. But he was sorry to say that the result of his examination was a conviction in his mind that he ought to oppose the second reading altogether.

The Bill was designed for two distinct objects—one, to fix permanent rates of duty for Ports which were to be placed under the general Harbor Act; the other, to levy Port-dues in harbors which it was not intended to place under that Act at all. With respect to both these distinct objects, the Bill went directly against the principles which had been determined by the Council when it passed the Harbor Act.

The first part of the Bill, which applied to Ports coming under Schedule A., authorized generally the local Government to fix a permanent maximum rate of four annas per ton without reference to the charges incurred at each Port. But that was exactly what the Council had refused to permit. The local Governments had all been asked to send up statements of the expenses of each Port, and the tonnage dues levied therein, in order that the Council might regulate the duties in each case with reference to the services performed. The Government of Madras had not been able to furnish this statement as yet. They said, they regretted "that they have hitherto been unable to furnish the particulars asked for by the Government of India, 5th December 1855, at the instance of the Legislative Council, as data for determining the maximum rates of Port-dues to be levied at the Madras Ports." They promised, however, to send up these data as soon as they themselves should obtain them. But they had not done so yet; and the Council could not fix the Port-dues in the absence of what were acknowledged to be the necessary data.

He had something like the same sort of objection—indeed, he had quite the same sort of objection to the second part of the Bill which applied to those minor Ports, named in Schedule B, to which it was not proposed to apply the provisions of the general Harbor Act. With respect to these, the Bill provided that the present rates should be permanent. He believed that, in the annexures to the Bill, it was not stated what the present rates were; so that, if the Council determined to continue them, whatever they might be, without any information on the point, they would be legislating in the dark. He supposed, however, that the rate was four annas per ton—the *maximum* rate proposed for the Ports classed under Schedule A. Amongst the Papers sent up by the Government of Madras, was a statement of what the actual receipts at each Port are; and he observed that the collections at some of the Ports mentioned in Schedule B were a mere trifle. At one Port, they were only five Rupees, and fifteen annas a year; and at several other Ports, they were not much larger. Where the receipts were so small as that, it appeared to him that no duty ought to be charged at all. These Port-dues were levied, not as items of general revenue, but as remuneration for services actually performed. In the minor Ports to which he referred, probably no services were performed. What, for instance, could the services be which could be adequately paid for at the rate of five Rupees and fifteen annas a year? The Madras Government stated that the business at these Ports was inconsiderable, and such as would not warrant the appointment of a Conservator. The business being

so inconsiderable, and the services performed being none or very little, he thought it better that no duties should be charged at all in such Ports, and that any small expenses therein incurred should be a charge upon the general revenues, than that the apparatus provided by the Act should be resorted to for the purpose of raising such a revenue five Rupees and fifteen annas a year.

These were his reasons for opposing the second reading of the Bill—for they were reasons which went against the principle of the measure.

He should recommend the Honorable Member in charge of the Bill to apply to the Madras Government for that information which was admitted to be necessary as data, in order that the Council might fix the rates at which dues should be leviable at each of those Ports which it was intended to bring under the general Act.

With regard to the minor Ports and Roadsteads for which all or nearly all that had to be done was to prevent them from being injured by the heaving of ballast overboard, he would recommend the Honorable Member to bring in a separate Bill authorizing the Madras Government to extend to any of these places any one or more of certain specified provisions of the general Act He would not recommend that the Government should be authorized to apply to such Ports any of the general provisions without exception, as most of them would be inapplicable to such small places. For example, those provisions which authorized the levy of Port-dues would be inapplicable; but those which were intended to prevent the injury of Ports, might very well be extended to these places in this simple manner.

MR. CURRIE said, after the observations made by the Honorable Member, he would not press the Motion for the second reading. He fully admitted the objections to which the Honorable Member had called attention; and, in fact, in introducing the Bill, he had himself intimated that he considered it objectionable on the very grounds stated by the Honorable Member. But in the absence of the Honorable Member for Madras, he did not see very clearly what course he could have taken other than that of introducing it into the Council, as he had done, in order that the Council might have an opportunity of expressing their opinion upon it. That opinion having now been expressed, he should communicate with the Madras Government, and recommend the adoption of the suggestions thrown out.

The Motion for the second reading was, by leave, withdrawn.

JOINT-STOCK COMPANIES.

On the motion of Mr. Peacock, the Council resolved itself into a Committee on the Bill "for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the Members thereof, as amended by the Select Committee."

Section I was passed as it stood.

Section II was passed after the insertion of the words "1st day of January 1858" in the blank left in it for the date after which any partnership consisting of more than twenty persons would be liable to a penalty, if not registered under the Act as a Company, or authorized by an Act of Parliament, or by Royal Charter, or by Letters Patent, or by an Act of the Governor-General of India in Council.

MR. PEACOCK remarked that the Act would come into force as soon as it was passed; but the date now inserted in this Section would give persons time to come in and enrol themselves under it.

Sections III to XXXIV were passed as they stood

Section XXXV provided for the audit of the accounts of a Company incorporated under the Act.

MR. CURRIE asked if the Honorable and learned Mover of the Bill had given his attention to the Petition of the Bombay Chamber of Commerce with reference to this Section.

MR. PEACOCK replied that he had, and that it did not appear to him necessary to make any alteration in the Section.

MR. CURRIE said, the Bombay Chamber of Commerce observed, in their Petition—

"The Shareholders of a Company may have an interest distinct from, and possibly opposed to, that of the Public; and whereas it is for the interest of the Public that the true state of the Company and its affairs should be

known, the shareholders may think it for their interest that the actual position of the concern should be concealed or misrepresented. Hence, they may be induced to appoint Auditors likely to give their sanction to false or deceptive accounts. Apart from these possibilities, however, your Petitioners may refer to many notorious instances in which the accounts of Joint Stock Companies have been passed by the Auditors as correct and satisfactory when the Company was on the verge of bankruptcy, or existing only at the expense of the Public."

On these grounds, the Bombay Chamber of Commerce was of opinion that, instead of allowing the Auditors to be appointed by the Company, it was expedient that the Government should appoint them. It appeared to him that the suggestion was worthy of attention. He had not himself given that attention to the subject which would warrant him in moving an amendment in the Section; but certainly his impression was that the appointment of Auditors should not be left to the shareholders, but that it would be better if it were left to the Executive Government. He presumed that the Section had been fully considered; but if it had not been, he should be disposed to suggest that after the word "Auditors" in the 5th line of the Section, the words "appointed by the Executive Government" be inserted.

MR. PEACOCK said, it appeared to him that the alteration suggested would altogether interfere with the principle of the Bill. The principle of the Bill was that persons should be allowed to associate in partnership with limited liability on any terms which they might think fit; and that those who dealt with them should be left to look after their own interests, and to judge for themselves whether the partnership was formed in such a manner as to entitle it to credit. If the terms upon which a Company should be formed should be such as the Public thought insufficient for their protection, the Public would not give credit to the Company. He thought it would be very unadvisable that the Government should be connected with any mercantile establishment. If they were to appoint the Auditors, they might be considered, to some extent, responsible for the due performance of their duties. There was no greater reason for the Government's appointing Auditors than there was for their appointing Directors. For his own part, he believed that Merchants and others in business could judge for themselves whether the Directors who managed a Company, or the Auditors who examined and reported upon its accounts, were worthy of confidence much better than the Government could judge for them. He therefore saw no sufficient reason for compelling partnerships formed under the Act to have their accounts audited by Government Auditors—and it appeared to him advisable to leave the Section in its present shape.

THE CHIEF JUSTICE said, he was certainly of the same opinion as the Honorable and learned Member who had spoken last. No doubt, it was perfectly true that there had been many lamentable instances of inefficient audits and of false reports of the affairs of Joint-Stock Companies; and that these had caused a great deal of misery. But there was no lack of dishonest trading by individuals and private Firms; and he did not see why the Executive Government should interfere for the suppression of one species of fraud more than another, or exercise a supervision over the affairs of one class of traders. He thought that the evils pointed out by the Honorable and learned Member would outweigh the advantages of such a system. The intervention of Government would be considered a very arbitrary interference with the course of Commerce; and he had considerable doubts whether the working of that kind of audit would be very much better than the working of the existing plan. He would be willing to support a measure of a penal character against Directors of Joint-Stock Companies who deceived the Public with false Reports, or were guilty of conduct which amounted to a criminal breach of trust. But he thought that the Public must be content with that kind of remedy, and ought not to insist on the interference of Officers appointed by Government for the management of Joint-Stock Companies.

Some conversation ensued; but, no substantive amendment being proposed, the Section was put as it stood, and passed.

Sections XXXVI to LVIII were passed as they stood.

Section LIX was passed after amendments.

The remaining Sections were passed as they stood.

The Schedule being proposed, Form A. was passed after amendments.

Table B was passed as it stood.

Form C was passed after an amendment.

Table D, and Forms E and F, with the Preamble and Title were passed as they stood.

The Council then resumed its sitting.

SMALL CAUSE COURTS.

Mr. LEGEYT moved that the Council resolve itself into a Committee on the Bill "to amend Act IX of 1850" (an Act for the more easy recovery of small debts and demands in Calcutta, Madras, and Bombay); and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to

The Bill passed through Committee without amendment.

The Council then resumed its sitting.

POLICE AND CONSERVANCY (SUBURBS OF CALCUTTA, AND HOWRAH.)

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill "to make better provision for the order and good government of the Suburbs of Calcutta and of the Station of Howrah;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment.

The Council having resumed its sitting, all the Bills settled in Committee were reported.

VOLUNTEER CORPS.

MR. PEACOCK moved that the Standing Orders be suspended, in order that he might bring in and read for a first and second time a Bill "to provide for the good order and discipline of certain Volunteer Corps, and to invest them with certain powers." It was well known to the Council that many gentlemen had come forward and offered their assistance to Government in the present disturbed state of the country, and had enrolled themselves as a Military Corps under Officers appointed by the Governor-General in Council. He was quite sure that every Honorable Member would agree with him that the thanks of the Public as well as of the Government were due to these gentlemen for the public spirit which they had evinced in thus volunteering their services in support of peace and good order, and for the energy with which they had hitherto discharged their duties. It was not thought right to allow a number of persons to be armed and drilled as a military Body without placing them under strict regulations for their government. The Bill, accordingly, provided that every Member of this Corps, or of any other Corps which might be enrolled under similar circumstances with the sanction of the Governor-General in Council, or of the Executive Government of Madras or Bombay, should, whilst on actual duty, be subject to the Articles of War for the European troops of the East India Company. This was only following the course which was adopted in England and Ireland when Yeomanry and Volunteer Corps were formed there. He wished it to be distinctly understood that he proposed to place these Volunteer Corps under the Articles of War for European troops only in so far as those Articles were applicable to Commissioned Officers, and only whilst they were on actual duty.

He had also provided that General Courts Martial, instead of being convened by the Commander-in-Chief, should be convened by the Commander of the Corps, with the sanction of the Governor-General in Council; that they should consist of not less than thirteen Members of the Corps, without regard to whether they might be Officers or not; that they should not have power of passing any sentence of death; and that no sentence of such Court Martial should be carried into execution until after a report of the proceedings should have been made to the Governor-General in Council or to some other person authorized to confirm such sentences, nor un-

til after the sentence should have been confirmed by the Governor-General in Council or such other person.

By the Mutiny Act, only Commissioned Officers could sit and act as Members of a Court Martial for the trial of Military Offences; but in these Volunteer Corps, though some of the Members might be selected as Officers, all of them ought to be placed on the same footing.

By the Articles of War, Commissioned Officers could not be tried by Regimental Courts Martial. But he had thought it right to provide by this Bill that Regimental Courts Martial might be convened by the Commander of the Corps, and that such Courts should consist of not less than three Members of the Corps.

The Bill provided that any person enrolled as a Member of the Volunteer Corps might, except while on actual service, quit the Corps upon giving to the Commanding Officer seven days' previous notice in writing. He did not think it right to allow Members, when on actual duty, the privilege of resigning the Service; but whenever they were not on actual duty, they might resign after seven days' notice in writing. In England, Members of Yeomanry and Volunteer Corps were bound to give fourteen days' previous notice; but he thought that seven days would be quite sufficient in this case.

He had also provided that every Member of the Corps, who should receive arms, ammunition, accoutrements, or uniform belonging to Government, or furnished from public stores or at the public expense, should deliver them up in good order and condition on quitting the Corps, or on dismissal therefrom, or whenever required by the Commanding Officer. He thought that there was nothing unreasonable in that provision. If arms, uniform, or accoutrements were furnished by Government, it was but right that Members who retired from the Corps should return them in proper order. Consideration would, of course, be made for reasonable use of the articles. He had further provided that, if the articles should not be returned, three Members of the Corps should be appointed by the Commanding Officer to adjudicate the value, and that their adjudication should be deemed a judgment, and might be enforced by any Court of Civil jurisdiction under the Act. In England, the Law imposed a penalty to be enforced by a Justice of the Peace; but he thought it much better that all such questions should be settled by three Members of the Corps than by a Court of Law or a Justice of the Peace.

The Bill further provided that the Commanding Officer of the Corps might, from time to time, frame such general rules as he might think fit for regulating the times at which, and the manner in which, the duties should be performed; and that such rules, when sanctioned by the Governor-General in Council, should be binding on the Corps. If any Member of the Corps should be guilty of any neglect or breach of duty, or of any military offence which the Commanding Officer might think would be sufficiently punished by a small fine, a Regimental Court Martial might award against him a fine not exceeding fifty Rupees, and, in default of payment, he might be dismissed from the Corps as unworthy to belong to it. He did not think it necessary to provide any means for recovering the fine. He thought that it would be quite sufficient, if a Member refused to pay such a fine as three Members of the Corps should think reasonable, that he should be liable to be dismissed from the Corps as unworthy to belong to it.

He thought it reasonable that every Member belonging to a troop of Cavalry should be exempted from the Municipal tax in respect of one horse, inasmuch as he must necessarily keep one for the performance of his duty.

It was necessary to invest the Members of the Corps with certain powers; and he had, therefore, provided that it should be lawful for any Member of the Corps, whenever he might be in the discharge of his duty, to disarm any person not in the Military or Naval Service of the Queen or of the East India Company, or a Police Officer, who should be found between sun-set and sun-rise in any public place, armed without a pass from the Commissioner of Police, or other Officer authorized by Government.

He had further enacted that it should also be lawful for any Member of the

Corps, whenever he might be on duty, to prevent any disturbance of the public peace, and to disperse any persons whom he might find assembled together to the number of five or more, without reasonable cause, between sunset and sun-rise in any public place; and also to apprehend any person against whom there should be reasonable grounds to suspect that he was about to commit an offence against the State, or to incite others to mutiny or rebellion.

For the purpose of protecting Members of the Corps in the discharge of their duty, he proposed to enact that any person who should assault or resist, or aid in assaulting or resisting, or incite any person to assault or resist any Member of the Corps in the execution of his duty, should, on conviction before a Magistrate or a Justice of the Peace, be liable to a fine not exceeding two hundred Rupees, or to imprisonment for any term not exceeding six months with or without labor. This was the penalty provided by the Police Act for offences against Police Officers; and it appeared to him that it would be no less an offence to assault or resist a Member of the Volunteer Corps in the discharge of his duty than it would be to assault or resist a Police Officer in the same position.

The powers vested by the Act in the Governor-General of India in Council might, as regarded Corps enrolled either in Madras or Bombay, be exercised by the local Government, and, if the Governor-General in Council should so order, by the Lieutenant-Governor of Bengal, or by the Lieutenant-Governor of the North-Western Provinces, or by the Chief Commissioners of the Punjab and Oude respectively, or the Commissioner of Nagpore.

He had thought it right to insert in the Bill a Clause to indemnify Members of the Corps for any acts done in the discharge of their duty which they would have been justified in doing if the Act had been in force at the time. It was not his intention to-day to carry the Bill farther than the second reading, and referring it to a Select Committee. In the interval which must occur before it was passed, he thought it necessary to provide some indemnification for Members of the Corps for any acts which they might do in the mean time; and to that extent the Act would be retrospective.

GENERAL LOW seconded the motion that the Standing Orders be suspended.

Agreed to.

MR. PEACOCK moved that the Bill be read a first time.

The Bill was read a first time.

On the Motion of MR. PEACOCK, it was also read a second time, and referred to a Select Committee consisting of General Low, Mr. Currie, Mr. LeGeyt, Sir Arthur Buller, and the Mover—with instructions to the Committee to report upon it on or before next Saturday.

The Council adjourned.

Saturday, July 4, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.
Hon. Major General J. Low,	E. Currie, Esq. and
Hon. B. Peacock,	Hon. Sir A. W. Buller.

SINGAPORE PORT-DUES.

The Clerk reported that he had received from the Officiating Under-Secretary to the Government of India in the Home Department a copy of a correspondence with the Court of Directors respecting the levy of Port-dues at Singapore.

VOLUNTEER CORPS.

MR. PEACOCK presented the Report of the Select Committee on the Bill "to provide for the good order and discipline of certain Volunteer Corps, and to invest them with certain powers."

JOINT-STOCK COMPANIES.

MR. PEACOCK moved that the Bill "for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the members thereof" be now read a third time and passed.

The Motion was carried, and the Bill read a third time.

SMALL CAUSE COURTS.

MR. LEGEYT moved that the Bill "to amend Act IX of 1850" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

POLICE AND CONSERVANCY (SUBURBS OF CALCUTTA, AND HOWRAH.)

MR. CURRIE moved that the Bill "to make better provision for the order and good government of the Suburbs of Calcutta and of the Station of Howrah" be now read a third time and passed.

The Motion was carried, and the Bill read a third time.

BOMBAY UNIVERSITY.

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "to establish and incorporate an University at Bombay," and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

THE NABOB OF THE CARNATIC.

MR. PEACOCK moved that the Standing Orders be suspended, in order that he might bring in and carry through its several stages a Bill "relating to the issuing of writs or process against certain Members of the Family, Household, and Retinue of His late Highness the Nabob of the Carnatic."

GENERAL LOW seconded the Motion.

Agreed to.

MR. PEACOCK said, it would be in the recollection of the Council that, after the death of the late Nabob of the Carnatic, the Government of Madras, being of opinion that Act I of 1844 continued to extend to those Members of the Family, Household, or Retinue of His Highness whose names were inserted in the last list published by the Madras Government under the provisions of the Act, recommended that a Bill should be brought in for repealing the Act; and, accordingly, a Bill for that purpose was introduced into this Council by his Honorable friend Mr. Eliott on the 15th of November last, and read a first time. The effect of Act I of 1844 was to give the Government of Madras the power of publishing, from time to time, lists containing the names of such persons belonging to the Family, Household, or Retinue of His Highness as they might consider entitled under the Act to exemption from Criminal or Civil process sued forth or prosecuted without the consent of the local Government; and the Act declared that the list which should have been the last published should be the list which, for the time being, should be in force and effect. It then declared that no writ or process should at any time be sued forth against the person or property of any person whose name should be included in the list which for the time being should be in force and effect for the purposes of the Act, unless such writ or process should be sued forth or prosecuted with the consent of the Government of Madras. The Government of Madras, considering that it was not right that the protection, which was supposed to extend to the persons named in the list last published under the Act, should be continued after the death of the Nabob, proposed that the Act should be repealed. But, at the same time, it was considered both by that Government and by the Government of India that it would be unjust to make these persons liable for debts which they might have contracted while the Act was in existence. In his Statement of Objects and Reasons, Mr. Eliott said:—

"The repeal of Act I of 1844 is intended to have effect prospectively only, leaving all persons hitherto protected by it still exempt from the jurisdiction of the Courts in respect of all acts done, or liabilities incurred, prior to the passing of the repealing Act, save, as before, in such cases as they may be made subject thereto by direct order of Government. The Government of India, in reply to a reference made to them by the Government of Madras on this point, have stated that 'they consider it clear that the repeal of the Law should be prospective only, and that great injustice would be done if the family of the Nawaub were now made liable for debts contracted under the Law. The fact that the Nawaub greatly abused the privileges which

the Law conferred upon him, would be no excuse for this injustice.' "

Accordingly, the Bill to repeal the Act contained an exception to that effect. That Bill was read a first and a second time, and referred to a Select Committee. Subsequently to this, an action was brought on the Civil side of the Supreme Court at Madras against one of the persons included in the last list published by the Government of Madras in pursuance of Act I of 1844, and a writ sued forth. Application was made to set aside the writ, on the ground that the person against whom it was directed was protected under the provisions of the Act of 1844. The application was argued before both Judges of the Supreme Court, who decided that the Act was merely personal to the Nabob; that the privileges given by it were personal to him; and that, after his death, the persons named in the list in force at the time of the death, could not claim the exemption which the Act was thought to confer upon them. In consequence of this decision, the Select Committee on the Bill to repeal the Act reported to the Legislative Council as follows:—

"We find that, since the publication of this Bill, the Supreme Court of Judicature at Madras has decided that Act I of 1844 was a personal Statute, which, upon the death of the late Nawaub of the Carnatic, ceased to have any operation. It having thus been pronounced judicially that the said Act is already extinct, it appears unnecessary to repeal it formally.

"On the supposition that a Law was necessary to repeal the Act, it was intended by the Bill for that purpose to make an exception as to all contracts made, liabilities incurred, and acts done, prior to the repeal, by persons privileged under the provisions of the Act, in accordance with the opinion of the Government of India that great injustice would be done if the Family of the Nawaub were now made liable for debts contracted under the Law But as, by the decision of the Supreme Court, it appears that the protection of the persons referred to was confined by the Law to the life-time of the Nawaub, it would be virtually to give them a new privilege *ex-post-facto* to repeal the Act with an express provision to the same effect as the intended reservation."

A Motion was afterwards made that this Report be adopted by the Council, and the Council voted in favor of it. The case, therefore, now stood thus. Act I of 1844 had not been repealed; the Supreme Court at Madras had decided that persons whose names appeared in the last list published under the Act were not entitled to the protection which it was supposed to afford them, even in respect of liabilities contracted during the period that the Act was in existence, and during the life-time of the Nabob; and the Legislative Council had come to the conclusion that, the Act having received that construction, it was not necessary to repeal it, or to grant any immunity beyond that which the Act itself conferred.

With respect to the construction put upon the Act by the Supreme Court at Madras, it was clear that the Madras Government, when they sent up their draft Bill, considered that the Act and the last list published by them under its provisions, continued in force even after the death of the Nabob; and that was likewise the view which the Governor-General in Council took of the question when the case was submitted to the Government of India. He (Mr. Peacock) did not mean to say that the Governor-General in Council deliberately scanned the Act on the occasion; but certainly, the general feeling both of the Governor-General in Council and of the Madras Government was that the Act continued to have effect after the death of the late Nabob; that it ought to be repealed; but that it would be only reasonable and just that the persons named in the last list should be protected as against debts contracted while the Act had been in force. The Legislative Council, also, appeared to think that the Act did protect these persons even after the death of the Nabob, so far at least as such an opinion on their part could be inferred from their having allowed the repealing Bill to be read a first and second time without objection, or even a suggestion from any Member that the Act had already ceased to have effect. For his own part, he must say that he certainly was of opinion, at the time when the repealing Bill was introduced, that the Act would continue in force, and would protect such of the members of the family as were included in the last list, until it should be repealed. He had since read the Act very carefully, and he retained that opinion. He might be wrong; and it was not for him to set

up his judgment against that of the learned Judges of the Supreme Court of Madras on a matter of this kind. But, as a Member of the Legislative Council, he thought that he was bound to exercise his own judgment upon the question whether, in consequence of the construction which the learned Judges had put upon the Act, it was reasonable to legislate on the subject. The Act declared that no writ should *at any time* be sued forth against any person named in the last list, and not that no writ should be so sued forth at any time *during the life-time of the Nabob*. The recital of the Act and the last Section of it both, in his opinion, tended to show that the privilege granted to the relatives of the Nabob was not merely personal to the Nabob himself. To him, it appeared to be reasonable, under all the circumstances of the case, to enact that a period of one year should be allowed to the persons whose supposed privilege the decision of the Court would affect, for the purpose of enabling the parties against whom the decisions had been given to petition Her Majesty in Council for leave to appeal against such decisions, and so to obtain the judgment of the highest Court of Appeal as to what was the proper construction of the Act. If the decision should be reversed, no harm would be done, as the Act would merely prevent creditors from obtaining judgments to which they were not entitled. If, on the contrary, the decisions should be held to be correct, there would be no very great hardship in preventing numerous creditors from instituting, while an appeal was pending for the purpose of ascertaining the true construction of the Act, actions for debts contracted by the persons in question while Act I of 1844 was in operation. He had, therefore, provided by Section I of his Bill that no writ or process should, at any time within the period of one year from the time of the passing of the Act, be sued forth or prosecuted against the person, goods, or property of any person whose name was included in any list published under the provisions of Act I of 1844, and which was in force and effect at the time of the death of the Nabob, unless such writ or process should be sued forth or prosecuted with the consent of the Governor in Council of Fort St. George—such consent to be testified by the signature of the Secretary, or one of the Secretaries of Government. He must not omit to mention a fact which he should have stated before—namely, that, since the resolution of this Council not to pass the Bill to repeal Act I of 1844, a fresh action had been commenced against Prince Azim Jah, one of the persons named in the list in force at the time of the death of the Nabob, for a debt contracted during the life-time of His Highness; that a writ had been sued forth; and that the Supreme Court had refused to set it aside, on the ground of their decision in the former case.

He repeated that, in his opinion—after the feeling which had existed in the minds of the Government of Madras, of the Government of India, and of the Legislative Council, that these persons had the protection which they claimed under the Act—it was not unreasonable to allow them one year for the purpose of enabling them to obtain the judgment of the Court of Appeal in England as to whether the construction of the Supreme Court of Madras, which took away from them that protection altogether even as to liabilities incurred before the Nabob's death, was a sound one or not.

Section II of his Bill provided that if an appeal against the decision of the Supreme Court of Madras should be admitted by Her Majesty in Council, no such writ or process as that mentioned in Section I should be sued forth or prosecuted until after the determination of the appeal; unless such writ or process should be sued forth or prosecuted with the consent of the Governor in Council, to be testified as described in Section I; or unless the Court before whom the writ or process was sued forth should be satisfied that the appellant had been guilty of unreasonable delay in prosecuting the appeal; in which case, the Court must make a special order for the suing forth of the writ.

With these observations, he begged to move the first reading of the Bill.

The Bill was read a first time.

MR. PEACOCK moved the second reading of the Bill.

The Motion was carried, and the Bill read a second time.

MR. PEACOCK moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

Section I was passed as it stood.

Section II being read—

MR. CURRIE said, he did not see how the second Proviso might operate. The person sued might not be the same person with the appellant.

MR. PEACOCK said, the intention was that all persons whose claim to protection under Act I of 1844 was affected by the decision given by the Supreme Court of Madras, should be protected until an opportunity had been given of appealing against the decision by which the Supreme Court considered itself bound; but that if, an appeal having been admitted by Her Majesty in Council, the appellant should fail to prosecute it with due diligence, the protection would cease.

THE CHIEF JUSTICE said, as he understood the Bill, the first Section would have the effect of preventing for the future, during the period of one year only, any process issuing against the person or property of any of the individuals named in the last list published by the Government of Madras under the provisions of Act I of 1844. But it appeared that some process of that kind had already issued. Those against whom the process was directed would be the only persons who *could* appeal. Whether they *would* do so, might be doubtful. If, however, any of them should appeal, but should be content simply to do that, and should not afterwards prosecute the appeal, it would be open to the creditors to come in and say that the preferring of the appeal was a mere pretext for delay and evasion, and to insist on their right to prosecute their writs notwithstanding the pendency of the appeal. It appeared to him that the actual working of the Act would depend entirely upon this—whether any of the persons against whom process had already issued would petition Her Majesty for leave to appeal if the demand were under the appealable amount; or would appeal as of right if the demand were above that amount. If there were no appeal, the Act would expire after one year; and then the creditors and the individuals in question would be in precisely the same position in which they were now. But he thought it more reasonable to suppose that the parties would avail themselves of the opportunity which this Bill would afford them of testing the construction that had been put upon Act I of 1844 by the Supreme Court at Madras. No doubt, the Bill was brought in hastily, and was, perhaps, in some degree, of an exceptional character; and one was always sorry to have to legislate in that way. But, upon the whole—and this was his reason for not having objected to the second reading—he was disposed to support the measure because it really did seem to him, to say the very least, doubtful whether the privilege given by Act I of 1844 was not a privilege personal to those mentioned in the list, and one which did not expire with the life of the Nabob. If the amounts involved in the suits which had been brought respectively, exceeded the sum in respect of which there was an appeal as of right, and a petition of appeal had been presented, the Court would probably have stayed its hand—certainly, it would not have allowed execution to issue, until that appeal against its jurisdiction had been determined.

But it was obvious that the parties claiming the privilege might be harassed by a number of suits for small sums aggregating a very large amount of liability, but in no one of which there could be an appeal as of right. And unless these actions were suspended until the question of jurisdiction was finally determined, there might be final judgment and execution in many of them—although it might ultimately be determined by the Court of Appeal that the privilege in question subsisted.

On the whole, then, as this was merely a temporary measure, for the purpose of giving to persons who conceived themselves to be protected by Act I of 1844 an opportunity of testing the correctness of a decision of the gravest importance to them—a decision which, without presuming to set his judgment against that of the Supreme Court of Madras, he felt to be so open to doubt as to deserve to be submitted to the consideration of the appellate Court—he should vote in support of the Bill.

The Section was then put, and passed as it stood.

Section III, the Preamble, and the Title, were passed as they stood.

The Council having resumed its sitting, the Bill was reported.

MR. PEACOCK moved that the Bill be read a third time, and passed.

The Motion was carried, and the Bill read a third time.

THE PENAL CODE.

MR. LEGEYT moved that a communication received by him from the Government of Bombay relative to the inadequacy of the punishment provided in Chapter XIV of "The Indian Penal Code" for the offence of attempting to create a disturbance of the public peace be referred to the Select Committee on the Code.

Agreed to.

VOLUNTEER CORPS.

MR. PEACOCK moved that the Bill "to provide for the good order and discipline of certain Volunteer Corps, and to invest them with certain powers," as amended by the Select Committee, be published in the *Gazette* for general information.

Agreed to.

SMALL CAUSE COURTS.

MR. LEGEYT moved that Mr. Grant be requested to take the Bill "to amend Act IX of 1850" to the Governor-General for his assent.

Agreed to.

JOINT-STOCK COMPANIES.

MR. PEACOCK moved that Mr. Grant be requested to take the Bill "for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the members thereof" to the Governor-General for his assent.

Agreed to.

POLICE AND CONSERVANCY (SUBURBS OF CALCUTTA, AND HOWRAH.)

MR. CURRIE moved that Mr. Grant be requested to take the Bill "to make better provision for the order and good government of the Suburbs of Calcutta and of the Station of Howrah" to the Governor-General for his assent.

Agreed to.

THE NABOB OF THE CARNATIC.

MR. PEACOCK moved that Mr. Peacock be requested to take the Bill "relating to the issuing of writs or process against certain Members of the Family, Household, and Retinue of His late Highness the Nabob of the Carnatic" to the Governor-General for his assent.

Agreed to.

MR. PEACOCK returned to the Council Chamber with the above Bill, and the Vice-President announced that the Governor-General had signified his assent thereto.

NOTICES OF MOTION.

MR. LEGEYT gave notice that he would, on Saturday the 11th instant, move the third reading of the Bill "to establish and incorporate an University at Bombay."

MR. PEACOCK gave notice that he would on the same day move for a Committee of the whole Council on the Bill "to provide for the good order and discipline of certain Volunteer Corps, and to invest them with certain powers."

The Council adjourned.

Saturday, July 11, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.
Hon. Major General J. Low,	E. Currie, Esq., and
Hon. J. P. Grant.	Hon. Sir A. W.
Hon. B. Peacock,	Buller.

MESSAGES FROM THE GOVERNOR-GENERAL.

The following Messages from the Governor-General were brought by Mr. Grant, and read:—

MESSAGE No. 107.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 4th July 1857, entitled "A Bill for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the members thereof."

By order of the Right Honorable the Governor-General.

CECIL BEADON
Secy. to the Govt. of India.

FORT WILLIAM,
The 10th July 1857.

MESSAGE No. 108.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 4th July 1857, entitled "A Bill to amend Act IX of 1850."

By order of the Right Honorable the Governor-General.

CECIL BEADON.
Secy. to the Govt. of India.

FORT WILLIAM,
The 10th July 1857.

MESSAGE No. 109.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 4th July 1857, entitled a Bill "to make better provision for the order and good government of the Suburbs of Calcutta, and of the Station of Howrah."

By order of the Right Honorable the Governor-General.

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 10th July 1857.

CIVIL PROCEDURE (BENGAL.)

THE CLERK presented a Petition of Goluckchunder Doss, Sherishtadar of the Moonsiff's Court in Chittagong, concerning the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bengal."

MR. PEACOCK moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

CIVIL PROCEDURE (BOMBAY.)

THE CLERK also presented a Petition of Inhabitants of Ahmedabad against so much of the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bombay" as relates to suits against Government and its Officers.

MR. PEACOCK moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

REVENUE ARREARS UNDER RYOTWAR SETTLEMENTS (FORT ST. GEORGE.)

THE CLERK reported to the Council that he had received a communication from the Madras Government relative to the necessity of passing a short Act to empower the Revenue Officers of that Presidency to sell either real or personal property of defaulting ryots for arrears of Revenue.

MR. CURRIE moved that the above communication be printed.

Agreed to.

PORT-DUES AND FEES.

MR. CURRIE moved the first reading of a Bill "to authorize the levy of Port-dues and fees at the present rates for a further period of twelve months."

In doing so, he said it would be in the recollection of the Council that, when the Harbor Act was passed, it was provided that the Port-dues and fees which were then collected at the several Ports might continue to be collected at the existing rates for the period of one year after the passing of the Act; and that, when that year had nearly elapsed, another Act was passed—Act XVI of 1856—by which the period during which dues and fees might be collected at existing rates, was prolonged for another year. This second year would expire on the 18th of next month.

In introducing into the Council Bills for the levy of Port-dues at some of the Ports in Bengal and at the Ports in

the Presidency of Madras, he had had occasion to mention that great difficulty had been experienced in obtaining the information requisite for the preparation of such Bills. He had found it necessary eventually to withdraw the Bill for the Ports of Madras, on account of its having been brought in unaccompanied with such information; and great delay had occurred with respect to Bills for other Ports. Indeed, the only Port for which an Act could possibly be passed before the 13th of next month, was the Port of Calcutta. Unless, therefore, the levy of Port-dues and fees was to be abandoned or suspended, it was absolutely necessary to allow a further extension of the period during which the existing rates might continue in force. He proposed to extend it, as on the former occasion, for another year. He hoped, however, that long before that year expired, Acts would be passed for all the Ports at which it might be thought necessary to collect Port-dues and fees. Accordingly, the Bill which he had the honor to introduce, and which was couched in very nearly the same terms as the Act of last year, enacted that the dues and fees now usually collected at the several Ports within the Territories in the possession and under the Government of the East India Company, might be collected at such Ports during the period of twelve months from the 13th of August 1857.

He should move the first reading of the Bill now. In moving the second reading, he should propose that the Standing Orders be suspended, in order that the Bill might be passed and transmitted to the Governments of Madras and Bombay before the 13th proximo.

The Bill was read a first time.

GANJA (BOMBAY PRESIDENCY.)

MR. LEGEYT moved the second reading of the Bill "relating to the sale of Ganja in the Presidency of Bombay."

The Motion was carried, and the Bill read a second time.

BOMBAY UNIVERSITY.

MR. LEGEYT moved that the Bill "to establish and incorporate an University at Bombay" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

VOLUNTEER CORPS.

MR. PEACOCK moved that the Council resolve itself into a Committee on the Bill "to provide for the good order and discipline of certain Volunteer Corps, and to invest them with certain powers;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I provided the penalty for military offences committed by any Member of Volunteer Corps "whilst on actual duty."

MR PEACOCK moved as an amendment that the words "or on parade" be inserted after the words "on actual duty." He had no doubt that when troops were on parade they were on actual duty; but his attention had been called to the Articles of War, which used the words "whilst on actual duty or on parade;" and therefore, to avoid all doubt on the subject, he proposed this amendment.

MR. CURRIE asked if the Honorable and learned Member proposed to alter Section IX also? That Section provided a penalty for neglecting to attend "actual duty other than drill or parade," and thus inferentially stated parade to be actual duty.

MR. PEACOCK said, his own opinion was that "parade" *was* "actual duty." But seeing that the Articles of War used the word "parade" as well as the words "actual duty," it appeared to him that, if a question should arise as to the construction of this Section, it might be contended that "parade" was not "actual duty" within the meaning of the Articles of War. To prevent any doubt upon the point, he thought it better that the words which he had proposed as an amendment should be inserted in the Section. They would be quite consistent with the words used in Section IX.

The amendment was agreed to, and the Section then passed.

Sections II to IV were passed as they stood.

MR. PEACOCK said, he proposed to move a new Section before Section V. It had been suggested to him by the Commanding Officer of the Calcutta Volunteer Corps that it should be made perfectly clear that the proceedings of Courts Martial convened under this Act should be conducted in conformity with the laws and customs which governed the proceedings of Courts Martial held under the Articles of War, except so far as they should be inconsistent with the Act; and, accordingly, he should move that the following new Section be inserted after Section IV:—

"The proceedings of Courts Martial convened under this Act shall be conducted according to the laws and customs applicable to Courts Martial held under the said Articles of War for the European Officers and Soldiers of the East India Company, except so far as the same are inconsistent with the provisions of this Act."

The Section was agreed to.

Section V provided that any Member of a Volunteer Corps not on duty, might quit the Corps after seven days' previous notice in writing.

MR PEACOCK said, when he introduced this Bill into the Council, it was not known that the Governor-General in Council intended to grant Commissions to persons who should be selected as Officers of the Corps. It having been since determined by the Governor-General in Council to grant such Commissions, some of the gentlemen selected to act as Officers appeared to entertain doubts whether, if they received Commissions, they would be at liberty to quit the Corps after seven days' notice. For his own part, he had no doubt that the fact of a Member of the Corps being elected an Officer, or even of his receiving a Commission, would not prevent him from quitting the Corps after such notice. To place the matter beyond all doubt, however, he proposed that the words "whether he shall have been elected or Commissioned as an Officer or not" be inserted after the word "Corps" and before the word "may" in the second line of the Section.

Agreed to.

MR. PEACOCK said, he had another amendment to propose at the end of the Section. The Section authorized any Member of the Corps to retire on giving seven days' notice of his intention. Cases might occur in which Members might have some business to attend to, which would leave them less than seven days within which to give notice, or which might leave them no time at all. As a provision for such cases, he proposed that the words "or without such notice, if the Commanding Officer of the Corps shall consider it reasonable to allow him so to do" be added to the Section.

The amendment was agreed to, and the Section then passed.

MR. PEACOCK moved a new Section after Section V. Several Members of the present Volunteer Corps, he said, were doubtful whether, if they received Commissions as Officers of the Corps, they might not be compelled to serve even after their resignation. To him it appeared that, as those who might receive Commissions would receive them merely as Members of the Corps, their obligation to serve would cease upon their resignation. But to prevent any doubt on the point, he would move that the following be inserted as a new Section after Section V:—

"Every Commission to any Member of such Corps appointing him an Officer in such Corps, shall cease upon the retirement or dismissal of such Member from the Corps."

The Section was agreed to.

Section VI provided for the delivery of arms belonging to Government by Members quitting the Corps. It was passed after amendments.

Section VII provided that no Member should be bound to serve beyond the place of enrolment, and the suburbs, or their immediate vicinity.

MR. PEACOCK said, he had an amendment to move in this Section also. As it originally stood, the Section provided that no Member of the Corps should be bound, without his consent, to proceed on duty beyond the distance of fifteen miles from the place at which he should have been enrolled. The Select Committee had thought it right to propose an alteration; and the Section now provided "that no Member of the Corps should be bound, without his consent, to proceed on duty beyond the town or place at which he should have been enrolled, and the suburbs or immediate vicinity thereof." He should explain that, when he inserted the words "fif-

teen miles" in the Section, he inserted them, not for the purpose of compelling Members of the Corps to go even to that distance against their will, but because he thought it right that there should be some limit to the distance within which they should be bound to go. It never was intended by the Council that gentlemen voluntarily enrolling themselves for the protection of life and property and the preservation of peace in these times, should be compelled to go against their will beyond the distance for which they volunteered their services; and the Section as it originally stood had been framed by him with the view of explicitly providing that fifteen miles was the utmost distance to which any Member of the Corps could be required to go. At the time of the enrolment of the Calcutta Corps, no specific distance had been fixed as that within which the Members might be required to proceed on duty; and in providing fifteen miles as the greatest distance, as he had originally done, his object was, rather to restrain the Government, than to impose any hardship on the Volunteers. He had fixed fifteen miles after communication with the Officer in command of the Corps, whom he had previously requested to ascertain the feelings and opinions of the Members on the subject. He had made this request, however, only the night or night but one previous to the introduction of the Bill, and the Commanding Officer had not had time to consult the Corps generally. Some of the Members whom he did consult, suggested twenty-five miles. He (Mr. Peacock), however, had thought that that was too much, and had inserted "fifteen miles," intending that the Bill should be published, and the opinion of the Corps generally be elicited by that means upon the point. It afterwards appeared that the general opinion was against fifteen miles, as being too great a distance, and the Select Committee altered the Section. From enquiries which he had since made, he had ascertained, as far as it could be ascertained, that the feeling of the Corps generally was that a certain distance should be fixed, and that, instead of the words "beyond the town or place at which he shall have been enrolled, and the suburbs or immediate vicinity thereof," which they considered vague and indefinite, they would prefer the words "beyond four miles from the place at which he was enrolled." He had no doubt that there were many gentlemen belonging to the Corps who, if their services were required, would willingly go, not only twenty-five miles, but double or treble that distance. But there were many Members who were not sufficiently masters of their own time to enable them to undertake to go on military duty to any considerable distance. Most, if not all, of them, probably, had business to attend to, which, if they were to proceed to any great distance beyond the town, might go to ruin and decay. But this was a general Act, and was not confined to Calcutta. At other places, four miles might not be sufficient, and gentlemen might be willing to volunteer to proceed on duty to places much more distant. He thought that the Act should be so worded as to enable any Corps to be formed for any distance which might be fixed at the time of the formation thereof. He, therefore, proposed that all the words of the Section from the word "bound" in the first line be left out, in order that the following might be substituted for them:—"to serve or proceed on duty beyond the limits within which he shall have voluntarily engaged to serve or proceed on duty, in accordance with the terms on which the Corps to which he belongs shall have been constituted. And in case no such limits shall be fixed, he shall not be liable to serve or proceed on duty beyond four miles within the place at which he was enrolled."

The amendment was agreed to, and the Section then passed.

Section VIII provided that the Commanding Officer of the Corps should frame rules for regulating the times at which, and the manner in which, the duties should be performed, subject to the sanction of the Governor-General in Council.

SIR ARTHUR BULLER said, it had been suggested to him that the Section should be so enlarged as to include rules for the organization and government of the Corps, and that these rules should originate with the Governor-General in Council.

He then proposed an amendment to

this effect which was, after some conversation, by leave withdrawn, and the Section passed as it stood.

Sections IX to XI were passed as they stood.

MR. PEACOCK said, he proposed to insert a new Section after Section XI. When he prepared the Bill, he thought that, if a Member of the Corps should neglect or refuse to pay a fine to which he should be sentenced by a Court Martial, it would be sufficient that he should be dismissed from the Corps as unworthy to belong to it. But it had been intimated to him that it would be more satisfactory to Courts Martial that there should be some mode of enforcing fines if they should think it necessary to impose them. It was felt that the award of fines by Courts Martial should not be set at nought, but that there should be some mode of enforcing payment. He had no objection to provide the same mode for realizing fines as was provided by Section VI for realizing any sum which might be adjudged for neglecting to return arms and accoutrements; and, accordingly, he should move that the following new Section be inserted:—

"Every sentence of a Court Martial by which a fine shall be imposed, shall be deemed a judgment, and may be enforced by any Court of Civil jurisdiction under the provisions of Acts XXXIII of 1852 and XXXIV of 1855."

Under this provision, and that of Section XI, any Member of the Corps neglecting or refusing to pay a fine within the period fixed, would be liable to be dismissed from the Corps, and also to have the fine levied against him.

The new Section was agreed to.

Section XII exempted every Member of a Volunteer Corps belonging to a troop of Cavalry from payment of tax in respect of one horse.

On the motion of Mr. Peacock, amendments were made by which the exemption was extended to every mounted Officer and every mounted Orderly of such Corps; and, after a verbal alteration, the Section was passed.

The remaining Sections were passed as they stood.

MR. PEACOCK said, he had to move that a new Section be added to the Bill. It had been suggested to him that a certificate of enrolment by the Commanding Officer of a Volunteer Corps should be deemed sufficient *primâ facie* evidence that the person named therein was a Member of the Corps. He rather thought that such a certificate of enrolment would be evidence for that purpose as the Law now stood; but as there might be a question as to whether the Officer commanding had power to grant such certificates, he, to avoid all doubt, would move that the following new Section be inserted:—

"A certificate of enrolment in such Corps, signed by the Commanding Officer thereof, shall be *primâ facie* evidence of such enrolment, without any further proof."

Agreed to.

MR. PEACOCK said, he had another new Section to propose. It seemed reasonable that the Governor-General in Council should have power to disband any Corps enrolled under the Act, and also to dismiss from the Corps any Member whenever he should think fit, in the same way as the Queen or the East India Company had the power of dismissing from their Troops any Officer even without the sentence of a Court Martial. He therefore proposed that the following new Section be added to the Bill:—

"The Governor-General in Council may disband any Corps enrolled under the provisions of this Act, or remove from the Corps any Member thereof, whenever he shall think it necessary or proper so to do."

Agreed to.

MR. PEACOCK said, it was quite clear that this Council had no power to alter the Articles of War for the European Troops. A Clause in the Charter Act by which the Council exercised the power of legislation, expressly withheld the power of altering any Act of Parliament for punishing mutiny and desertion. The Mutiny Act and Articles of War for the European Troops of the East India Company provided that

"All persons belonging to any of the Forces of the East India Company commissioned or in pay as Officers, *or listed or in pay* as non-commissioned Officers or Soldiers,"

should be governed by the Articles of War, and be subject to be tried by Courts Martial. And Article 156 provided that

"The Officers and Soldiers of any Troops which are or shall be raised or serving in any of the possessions or territories which are or may be under the Government of the East India Company, or by any Forces of the East India Company, *being mustered and in pay*,

shall, when joined or acting with the East India Company's Forces, or under the command of any Officers having a Commission immediately from the Government of any of the Presidencies, be governed by these Rules and Articles of War, and shall be subject to be tried by Courts Martial in like manner as the Officers and Soldiers of the regular Troops."

He believed that Volunteer Corps were being raised, some of the Members of which were to be paid by Government. It was desirable that it should be made perpectly clear that this Act was not intended to apply to such persons, but that they should be subject to the Articles of War, in the same manner as if they belonged to the regular Troops of the Company. He, therefore, moved that the following new Section be added to the Bill:—

"This Act shall not extend to any Volunteers listed or mustered and in pay."

Agreed to.

The Preamble and Title were passed as they stood; and, the Council having resumed its sitting, the Bill was reported.

MR. PEACOCK moved the third reading of the Bill. The Bill had already been published one week; as it now stood, he believed it would meet the wishes and feelings of the Calcutta Volunteer Corps generally; and it appeared to him that its republication for a short time would serve no object, but would unnecessarily occasion the loss of a week.

The Motion was carried, and the Bill read a third time.

FORFEITURE OF PROPERTY FOR MUTINY.

MR. PEACOCK moved that the Standing Oders be suspended, in order that he might bring in a Bill "to render Officers and Soldiers in the Native Army liable to forfeiture of property for Mutiny, and to provide for the adjudication of forfeitures of property in cases in which offenders cannot be brought to trial."

The Motion was seconded by General Low, and carried.

MR. PEACOCK said, under the Articles of War for the Native Troops, forfeiture of property was not part of the punishment for mutiny. By recent Acts, however, it had been enacted that every person who wages war against the State, or seduces or attempts to seduce any Officer or Soldier from his allegiance, shall forfeit all his property of every description; and a similar forfeiture of property had been provided in the case of other heinous crimes. The Bill which he proposed to introduce provided that every Officer or Soldier of the Native Army who should be convicted of mutiny should be liable to forfeiture of all his property of whatever description; and in order to obviate any doubt as to the time when property became forfeited, the Bill declared that every forfeiture should have relation to the time at which the offence was committed.

It might probably happen that persons, guilty of offences for which they would be liable to forfeiture of property, might be killed, or might die, before conviction; or that they might conceal themselves, or escape from the East India Company's territories in order to evade justice. Accordingly, the Bill enacted that, if any person who should have committed any offence for which his property was liable to forfeiture upon conviction, or otherwise, should have been killed, or should have died before conviction, or should have escaped from the East India Company's territories, or should keep out of the way, for the purpose of evading trial, any Court or other authority who might have tried him, if he could have been brought to trial, should, on the application of the Magistrate, or other Officer authorized by the Government to make such application, hold an enquiry, and, upon proof that the person charged was guilty, and that he was dead, or had escaped from the British territories, or could not be found after diligent search, adjudge that the whole of his property should be forfeited to Government.

It might happen that a person accused of an offence punishable with forfeiture of property, might have gone out of the British territories without any intention of avoiding trial, and without being guilty of the offence laid to his charge. The Bill, therefore, provided that, in any such case, if the person accused should surrender himself for tr al after his property should have been confiscated, his property should be restored upon proof that he had not committed the offence charged, and had not kept out of the way to avoid trial.

With these observations, he should move the first reading of the Bill.

The Bill was read a first time.

MR. PEACOCK moved the second reading of the Bill.

The Motion was carried, and the Bill read a second time.

MR. PEACOCK said, he did not propose to proceed farther with the Bill to-day, but should move that it be referred to a Select Committee consisting of General Low, Sir Arthur Buller, Mr. LeGeyt, and the Mover, with instructions to the Committee to report upon it on Saturday next.

THE CHIEF JUSTICE said, he should suggest to the Select Committee the insertion of a Clause that, where the person accused was dead, his heirs might come in and be heard at the enquiry before his property was confiscated. There was a provision of that kind in the Moplah Act.

MR. PEACOCK said, he had not taken the Section in this Bill from the Moplah Act; but he thought the suggestion of the Honorable and learned Chief Justice worthy of attention, and had no doubt it would be considered by the Select Committee.

The Motion to refer the Bill to a Select Committee was then carried.

MESSENGER.

MR. PEACOCK moved that General Low be requested to take the Bill "to provide for the good order and discipline of certain Volunteer Corps, and to invest them with certain powers" to the Governor-General for his assent.

Agreed to.

MR. LEGEYT moved that General Low be requested to take the Bill "to establish and incorporate an University at Bombay" to the Governor-General for his assent.

Agreed to.

The Council adjourned.

Saturday, July 18, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.,
Hon. Major General J. Low,	E. Currie, Esq., and
Hon. J. P. Grant,	Hon. Sir A. W. Buller.
Hon. B. Peacock,	

The following Messages were brought by General Low, and read:—

MESSAGE No. 110.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 11th July 1857, entitled a Bill "to establish and incorporate an University at Bombay."

By order of the Right Honorable the Governor-General.

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 17th July 1857.

MESSAGE No. 111.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 11th July 1857, entitled a Bill "to provide for the good order and discipline of certain Volunteer Corps, and to invest them with certain powers."

By order of the Right Honorable the Governor-General.

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 17th July 1857.

FORFEITURE OF PROPERTY FOR MUTINY.

MR. PEACOCK postponed the presentation of the Report of the Select Committee on the Bill "to render Officers and Soldiers in the Native Army liable to forfeiture of property for Mutiny, and to provide for the adjudication of forfeitures of property in cases in which offenders cannot be brought to trial."

LAND CUSTOMS (BOMBAY.)

MR. CURRIE presented the Report of the Select Committee on the Bill "to make better provision for the collection of Land Customs in certain Foreign Frontiers of the Presidency of Bombay."

PORT-DUES AND FEES.

MR. CURRIE moved that the Bill "to authorize the levy of Port-dues and Fees at the present rates for a further

period of twelve months" be now read a second time.

The Motion was carried, and the Bill read a second time.

GANJA (BOMBAY PRESIDENCY.)

MR. LEGEYT moved that the Bill "relating to the sale of Ganja in the Presidency of Bombay" be referred to a Select Committee consisting of Mr. Currie and the Mover.

Agreed to.

PORT-DUES AND FEES.

MR. CURRIE moved that the Bill "to authorize the levy of Port-dues and Fees at the present rates for a further period of twelve months" be referred to a Select Committee consisting of Mr. Grant, Mr. LeGeyt, and the Mover.

MR. GRANT said, he wished to make one remark upon the Motion. This would be the second extension of the period within which the local Governments were to have furnished information requisite to the framing of Bills for the several Ports respectively subject to them. When the General Harbor Act was passed, one year was given to the local Governments for that purpose. That period elapsed without the necessary information having been furnished, and a second year was allowed. It was now proposed to give a third year. He must say that he thought the Council had reason to complain of the very great delay which had taken place. He believed that six months would have been amply sufficient to enable the local Authorities to prepare and submit to the Council all the data which they had been requested to supply; and, therefore, if he were to be appointed a Member of the Select Committee upon the present Bill, he should propose in that Committee that the further term of one year which it provided should be reduced to six months. If the local Governments should fail to send up the necessary information within the next six months, he, for one, should not be prepared to vote for any further extension.

MR. LEGEYT said, he thought it right to offer a few words in explanation with reference to the Government of Bombay.

The Council had objected to that portion of the Ports Bill which proposed to give power to the local Governments to impose a consolidated tonnage duty not exceeding eight annas a ton upon all sea-going vessels and river-steamers taking in or discharging cargo or passengers, and upon all such vessels not taking in or discharging any cargo or passenger, one-half the duty that would otherwise be chargeable. This provision was discussed in a Committee of the whole Council in July 1855, and the result of the debate was that it was negatived, and another substituted by which the dues and fees then collected were continued for one year, within which period the local Governments were to furnish their respective estimates of the dues required to be collected at each Port subject to their Governments, together with data which would enable the Council to determine whether the scale of duty recommended should be allowed. The Government of Bombay had sent the desired information in respect of four of the Ports in that Presidency, stating that they had been unable to collect details regarding the others; and they proposed that they should be authorized to levy such fees in all the Ports as might be found reasonable, and not to exceed a fixed maximum rate which they mentioned. He had, however, declined introducing into the Council a Bill for that purpose, since it would, in effect, have been a revival of the rejected Clauses—which rejection, he supposed, must have been overlooked by the Bombay Government. He had communicated with the Bombay Government, and fully expected that no time would be lost in obtaining the necessary information, and hoped that six months would be a sufficient duration for the proposed Bill.

MR. CURRIE'S Motion was then agreed to.

MR. CURRIE moved that the Standing Orders be suspended, to enable the Select Committee to report on the Bill within one week.

MR. GRANT seconded the Motion.

Agreed to.

NOTICE OF MOTION.

MR. LEGEYT gave notice that he would, on Saturday the 25th Instant, move the first reading of a Bill for appointing Municipal Commissioners, and for levying rates and taxes, in the Town of Bombay.

The Council adjourned.

Saturday, July 25, 1857.

PRESENT:

The Hon. J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.,
Hon. Major General J. Low,	E. Currie, Esq., and
Hon. J. P. Grant,	Hon. Sir A. W.
Hon. B. Peacock,	Buller.

CRIMINAL PROCEDURE (BENGAL.)

THE CLERK presented a Petition of the Armenians of Dacca and Calcutta praying that whatever Criminal Law may be passed for British-born subjects, the same Law may be extended to the Armenians domiciled and inhabiting within the Territories of British India.

MR. PEACOCK moved that the above Petition be referred to the Select Committee on the Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in Bengal, for simplifying the procedure thereof, and for investing other Courts with Criminal jurisdiction."

Agreed to.

FORFEITURE OF PROPERTY FOR MUTINY.

MR. PEACOCK presented the Report of the Select Committee on the Bill "to render Officers and Soldiers in the Native Army liable to forfeiture of property for Mutiny, and to provide for the adjudication of forfeitures of property in cases in which offenders cannot be brought to trial."

PORT-DUES AND FEES.

MR. CURRIE presented the Report of the Select Committee on the Bill "to authorize the levy of Port-dues and Fees at the present rates for a further period of twelve months."

MUNICIPAL ASSESSMENT (BOMBAY.)

MR. LEGEYT moved the first reading of a Bill "for appointing Municipal Commissioners and for raising a fund for Municipal purposes in the Town of Bombay." He said, the object of the Bill was to provide Municipal funds for the Presidency Town of Bombay, and to constitute a Body for the management of Municipal affairs generally. The Bill had been framed in conformity with the provisions of Act XXV of 1856 which was known as the general Municipal incorporated Act, and was the special Act for Bombay indicated in the first Section of that measure. In its provisions it followed generally Acts XXVI and XXVIII of 1856, for appointing Municipal Commissioners, and for levying rates and taxes, in the towns of Madras and Calcutta respectively; but as the state of Municipal matters in Bombay differed materially from that of Municipal matters in Calcutta and Madras, he had not been able to preserve strict uniformity in respect to details.

There had been for several years a more regularly constituted Municipal Body in Bombay than had existed in the other Presidencies, in the shape of a Bench of Justices of the Peace. This Body had had under its control all the Municipal affairs of the Town for many years. It had been formed under Section CLVIII of 33 Geo. III, c. 52, and the number of its Members was now about seventy, of whom one-third consisted of Native gentlemen of large property and local influence. It had been fully recognized by the Government of Bombay as a Municipal Body; and its numbers had been increased considerably within the last three years, with a view to its usefulness.

There had been a lengthened discussion between the Government and the Bench of Justices as to the most advisable form to be adopted for the future constitution of the Municipal Body; and, after the consideration of several schemes, it had now been agreed between the Government and the Bench that it would not be advisable materially to alter its present shape. Accordingly, this Bill (although it repealed Section CLVIII of 33 George III c. 52, and Act XI of 1845, under which the Bench of Justices, with an executive Body named the Board of Conservancy, managed Municipal matters in Bombay) vested the control of those matters in the Bench of Justices, and reconstituted the Board of Conservancy, under the designation of Municipal Commissioners, with a slight alteration in the mode of appointing the Members, and providing remuneration for their services.

The Government of Bombay, in a letter to the Bench of Justices on this subject dated the 19th of March last, and which would form one of the annexures to the Bill, stated that the entire Municipal disbursements in Bombay amounted to 5,80,000 Rs. a year—and this exclusive of 1,20,000 Rs. a year which they proposed to devote, for five years, to a system of general and efficient drainage. The present income of Bombay, they stated, in the same letter, to be only 4,80,000 Rs. a year. It was, therefore, necessary to look elsewhere than to the house and ground tax, the horse and carriage tax, and some other small sources of income, for providing an adequate sum for the Municipal wants of the Town. The Government of Bombay had propounded a scheme which had been fully agreed to by the Bench of Justices, and which, if brought into operation, would provide the required income, and secure many and important advantages to the Town of Bombay. In the 30th and subsequent paragraphs of their letter, the Government of Bombay said :—

"30. In order to meet this excess of charges to provide for improving old and opening new roads, and for a large sum being devoted annually to the drainage works, a very considerable addition will be necessary to the revenue which may be expected from existing sources of taxation; and, after careful consideration, the Right Honorable the Governor in Council is of opinion that the plan which I am now instructed to propose, and for which Government are in a great measure indebted to Mr. Hutchinson, the Collector of Bombay, would be the most unobjectionable mode of raising the requisite funds. In explaining this plan, I shall do so principally in the words of a memorandum drawn up by Mr. Hutchinson, which, with some modifications as to the rate of taxation, has been adopted by Government, with respect to the four principal articles proposed for taxation; namely, grain, butcher's meat, ghee, and fire-wood.

"31. Estimating the population of Bombay at 5,00,000, and the consumption of grain (at the rate of one seer and a half for each person per diem) at one candy per annum, it may be assumed that about 5,00,000 candies of grain are brought into Bombay, exclusive of the grains consumed by horses and cattle. The prices range from sixteen to forty Rupees per candy. Taking the average price at twenty Rupees per candy, a duty of four annas per candy will be equivalent to 4¼ per cent., and fall on the whole population at the average rate of only (4) four annas a head per annum. A duty of four annas per candy will yield 1,25,000 Rupees."

The letter then adverted to the objections usually raised to such a tax on grain, and suggested answers to them. He would not take up the time of the Council by reading these. But in paragraph 35, the Government said :—

"35. Sheep and oxen brought into Bombay, fall within the category of articles of local consumption which may fairly be taxed for Municipal purposes. There were brought to the public slaughter-houses in 1855 :—

Cows and Bullocks, .	15,700
Buffaloes, . .	1,200
Calves, . . .	1,000
Sheep and Goats, .	2,20,000
Kids and Lambs, . .	5,600

"36. Besides the above, there were slaughtered, at Mahim, Colaba, and elsewhere, for public sale, about 30,000 sheep and goats, and more than this number in private houses, for family use, at the *Buckree Eed* and other Mahomedan festivals.

"37. A Tax on sheep, oxen, &c. at the following rates, would yield a large revenue, without making any perceptible increase in the retail price of butcher's meat.

Cows and oxen, including Calves 18,000, at four annas each, .. Rs.	4,500
Sheep and Goats 3,00,000, at two annas each, ...	37,500
Kids and Lambs 6,000, at two annas each, ...	750
Rupees,	42,750

"38. The quantity of ghee imported last year was 67,000 cwt. or about 2,68,000 mds. A duty of six annas per maund would be a light duty, and yet produce about 1,00,000 Rupees. Not very long since, the price was 7 or 8 Rs.: it is now 5½ Rs. or 6 Rs. a maund.

"39. Fire-wood might also be taxed, the import being estimated at 5,00,000 candies. There might be raised from this source, at two annas per candy, about 62,500 Rs. per annum.

"40. In addition to the above, the Right Honorable the Governor in Council considers that a tax should also be levied on all building materials, as timber, chunam, and quarried stone. The revenue from this source might be estimated at perhaps little under 1,00,000 Rs.."

The letter proceeded to suggest the levy of a small toll, as a toll, on causeways; but that project had, after some discussion, been abandoned; and the local Town-Duties now stood under the head of grain, butcher's meat, ghee, fire-wood, and building materials. It was calculated that these duties would yield a sum of 4,60,000 Rs. which, added to 4,80,000 Rs. derived from existing sources, would make the aggregate annual income of the Municipal Fund 9,40,000 Rs. This sum would cover the estimate of annual disbursements—

namely5,80,000Rs.—and leave a surplus income of 3,60,000 Rs. Out of this sum, the Government of Bombay proposed to reserve 1,00,000 Rs. for the widening of streets, the construction of new roads, the introduction of a better system of lighting, and other improvements; and that would leave a surplus of 2,60,000 Rs. Then, the scheme of the Government was this :—

"The Right Honorable the Governor in Council would propose that Her Majesty's Justices should devote such surplus, or at least 2,50,000 Rs. per annum, to the reformation of the drainage; and, in the event of this proposal meeting with the approval of the Bench, His Lordship in Council will be ready to recommend to the Government of India that the proceeds of the additional duties upon liquor, estimated to amount to 2,50,000 Rs. per annum, should be contributed temporarily towards this important object."

He had not before him the official papers on the subject; but from information which he had received, he had reason to believe that it was proposed to realize this sum of 2,50,000 Rs. from additional duties upon liquor by introducing into Bombay the same Abkaree system as that which was in force in Calcutta, but which had not hitherto prevailed there.

The letter then proceeded as follows :—

"When the improvement of the drainage and sewerage of the Island shall be completed, on account of which the sum of 2,50,000 Rs. is to be contributed from the Municipal Fund, it is proposed that the payment to Government of that sum should be continued, as an addition to the ordinary instalment from the Municipal Fund, for the repayment of the cost of the Vehar Water Works; and it is calculated that, if the proposed arrangement be assented to, the whole cost of the water-supply of Bombay, together with interest on the outlay, will be paid off in about sixteen years. At the end of this period, the Municipal income would apparently be much in excess of the requirements of the Municipality; and it would then, consequently, be desirable to reduce the Municipal taxes."

The letter went on to propose that, as a provision against possible errors in the estimate of receipts and disbursements, and a frequent recourse to the Legislature, Her Majesty's Justices should be vested with the discretionary power, within certain limits, of increasing the rates at which the proposed taxes should be levied. But as that proposition involved the principle of delegating to an Executive Government a power which belonged properly and exclusively to the Legislative Council, he had not given effect to it in his Bill.

The Scheme of the Government of Bombay had been submitted to Her Majesty's Justices, who, with suggestions of some very slight modifications, which would be found among the annexures to the Bill, had accepted it. In his own mind, he believed that no other such acceptable scheme of taxation to make up the deficiency in the Muncipal Fund could possibly be proposed as these Town-Duties. A more extended scheme of Town-Duties had been put forward :—a scheme in which it was proposed that import and export duties should be levied upon certain articles, in addition to the existing Customs duty, and a Town-Duty upon every vessel of more than fifty candies entering the harbour in addition to the existing Port-dues and fees. That proposition had been made by a majority of the Justices, but opposed by the Bombay Chamber of Commerce. The Government of Bombay were at first disposed to support it; but, upon careful re-consideration, they determined to reject it, and to confine the proposed new taxation to those articles of local consumption which he had enumerated.

He might mention that, in many of the large towns of Bombay which had adopted the Act XXVI of 1850 (the Mofussil Municipal Act), the taxes proposed by the present Bill were already levied with the consent of the people, and were readily and cheerfully paid. There was no community, he supposed, which had an instinctive predilection for taxes of any kind; but it was an admitted fact that the levy of Town-dues was a scheme of taxation which found less disfavor than any other which could be resorted to among the people of India; and if the Council would pass this Bill, which included that scheme of taxation, they would introduce a system which, while it would confer most important benefits upon the Town of Bombay, in the shape of efficient drainage and an ample supply of drinking water, would, he was convinced, be received by the inhabitants without a murmur; whereas he had the strongest reasons for believing that, if the house and ground-rates were raised to a higher figure than that at which they now

stood—that was to say, to ten per cent. —and an occupation-rate, and perhaps a lighting-rate were imposed, the greatest objection would be felt by the rate-payers, amongst whom would be those who were the most influential inhabitants of the Island.

He had been enjoined by the Government of Bombay to recommend to the Council in the strongest manner the adoption of the measure which he had now the honor to introduce, and to express their earnest hope that the provisions which it contained would receive their gravest consideration.

The Bill consisted of thirty-one Sections.

Section I repealed existing Laws.

Section II provided that the present assessment should remain in force until revised.

Section III incorporated with the Act the general Act XXV of 1856.

Sections IV to XI constituted the Municipal Commissioners.

Sections XII to XVI provided for a house and ground rate at 5 per cent., but with a proviso that the Government might raise the rate to 7½ per cent., if the Justices in Sessions should recommend such increase.

Sections XVII to XXIII provided for a horse and carriage tax. The Schedule according to which it was proposed that this tax should be levied was considerably higher than the Schedule given in the special Acts for Calcutta and Madras. But it was a Schedule framed by the Justices in Sessions, who had been able to ascertain the views and wishes of the people on the subject, and no objection had been raised to the rate proposed. For his own part, he felt bound to say that the excellent state of repair in which the roads of Bombay were kept, and the extensive watering they received, would quite reconcile rate-payers to the proposed enhanced taxation.

Sections XXIV to XXVII related to the levy and collection of Town-Duties.

Sections XXVIII to XXXI related to the constitution of the Municipal Fund.

With these observations, he begged to move the first reading of the Bill.

The Bill was read a first time.

PORT-DUES AND FEES.

MR. CURRIE said, he had presented to-day the Report of the Select Committee on the Bill "to authorize the levy of Port-dues and fees at the present rates for a further period of twelve months." The only alteration which the Select Committee proposed to make in the Bill was to reduce the period during which Port-dues and fees might continue to be collected at the existing rates, from "twelve" months to "six" months, in accordance with the suggestion thrown out last Saturday by the Honorable Member opposite (Mr. Grant.) Before the Council went into Committee on the Bill, he should move that the Report of the Select Committee be read at the table.

Agreed to.

The Report was read accordingly, as follows:—

"TO THE HONORABLE THE LEGISLATIVE COUNCIL.

"We, the Select Committee appointed to consider the Bill 'to authorize the levy of Port-dues and fees at the present rates for a further period of twelve months,' have the honor to make the following Report:—

"We have thought it advisable to restrict the further period during which dues and fees may be levied at existing rates, to six months.

"We observe that, when this Bill comes into operation, two years will have elapsed since the passing of the Harbour Act; and we think that that period was much more than sufficient for supplying the requisite information, and preparing and passing the supplemental Acts, which, under the provisions of the Harbour Act, are necessary for each Port at which dues are levied.

"We are strongly of opinion that no further extension of the period, beyond the time which we propose to fix by this Bill, should be allowed.

(Sd.) E. CURRIE.
" J. P. GRANT.
" P. W. LEGEYT.

The 25th July, 1857."

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment.

The Council having resumed its sitting, the Bill was reported.

MR. CURRIE moved the third reading of the Bill. It was necessary that the Bill should be passed as soon as possible, because the period allowed by the last Act for the levy of Port-dues

and fees at the existing rates, would expire on the 13th of the next month, and it was desirable that this Act should reach Madras and Bombay before that date.

The Motion was carried, and the Bill read a third time.

MR. CURRIE moved that Mr. Grant be requested to take the Bill to the Governor-General for his assent.

Agreed to.

PORT-DUES (KYOUK-PHYOO.)

MR. CURRIE moved that a communication received by him from the Principal Assistant to the Commissioner of Arracan, relative to the receipts and charges of the Port of Kyouk-Phyoo, be laid upon the table and referred to the Select Committee on the Bill "for the levy of Port-dues in the Ports of Moulmein, Rangoon, Dalhousie, Akyab, and Chittagong."

Agreed to.

FORFEITURE OF PROPERTY FOR MUTINY.

MR. PEACOCK moved that the Bill "to render Officers and Soldiers in the Native Army liable to forfeiture of property for Mutiny, and to provide for the adjudication of forfeitures of property in cases in which offenders cannot be brought to trial," as amended by the Select Committee, be published in the *Gazette* for general information.

Agreed to.

MR. PEACOCK gave notice that he would, on Saturday the 1st of August, move for a Committee of the whole Council on the above Bill.

The Council adjourned.

Saturday, August 1, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.,
Hon. Major General J. Low,	E. Currie, Esq., and
Hon. J. P. Grant,	Hon. Sir A. W. Buller.
Hon. B. Peacock,	

Mr. Currie

PORT-DUES AND FEES.

The following Message from the Governor-General was brought by Mr. Grant, and read:—

MESSAGE No. 112.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 25th July 1857, entitled "A Bill to authorize the levy of Port-dues and Fees at the present rates for a further period of six months."

By order of the Right Honorable the Governor-General.

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 31st July 1857.

FORFEITURE OF PROPERTY FOR MUTINY.

MR. PEACOCK moved that the Council do resolve itself into a Committee on the Bill "to render Officers and Soldiers in the Native Army liable to forfeiture of property for Mutiny, and to provide for the adjudication of forfeitures of property in cases in which offenders cannot be brought to trial;" and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

Agreed to.

Section I was passed as it stood.

Section II provided for adjudication of forfeiture in the case of any offender "who shall have been killed, or shall have died, or shall have escaped out of the territories of the East India Company before he shall have been convicted of the offence, or shall keep out of the way for the purpose of avoiding trial."

SIR ARTHUR BULLER said, it might be difficult for the prosecution to prove that an offender was keeping out of the way for the purpose of avoiding trial. It would be sufficient to prove that he could not be found after diligent search; and he therefore moved that the words "cannot after diligent search be found" be substituted for the words "shall keep out of the way for the purpose of avoiding trial." Words to the same effect occurred in Section VIII, which related to the restoration of forfeited property.

The amendment was agreed to, and the Section then passed.

Section III provided that forfeiture of property should relate back to the time of the commission of the offence.

It was passed after a verbal amendment.

Sections IV to VII were passed as they stood.

Section VIII provided that, if any person whose property had been adjudged to be forfeited should "afterwards surrender himself" and be acquitted, his property should be restored to him upon proof that he had not escaped or kept out of the way for the purpose of evading justice.

MR. PEACOCK said, it was desirable that the time within which the owner of property adjudged to be forfeited under Section II should come forward to set aside the adjudication of forfeiture, should be limited. Section IX provided that "no suit or other proceeding shall be had or taken on account of the seizure of any property seized in pursuance of this Act, or for the restoration or recovery of such property, unless the same be instituted within one year from the time of the seizure;" but there was some doubt whether this limited the time within which a person whose property was declared to be forfeited by reason of his absence, and who wished to have it restored, should surrender himself and prove that he was innocent of the offence charged, and that he had not escaped or kept out of the way for the purpose of evading justice. He (Mr. Peacock) therefore moved that the word "afterwards" be left out of the Section, in order that the following words might be substituted for them: —"within one year after the seizure of any part of his property as a forfeiture."

Agreed to.

MR. PEACOCK next moved that the words "or the proceeds thereof" be inserted between the words "his property" and the words "shall be restored" in the 6th and 7th lines of the Section. If no sale should have taken place before the owner surrendered himself and proved his innocence, the property would be restored to him: if a sale should have taken place, he would receive the proceeds which it had realized.

The amendment was agreed to, and the Section then passed.

Section IX was passed after a similar amendment as the last.

The remaining Sections, with the Preamble and Title, were passed as they stood.

The Council having resumed its sitting, the Bill was reported.

MR. PEACOCK moved the third reading of the Bill.

The Motion was carried, and the Bill read a third time.

ARMS AND AMMUNITION.

THE VICE-PRESIDENT moved that the Standing Orders be suspended, in order that he might bring in and carry through the first and second stages a Bill "relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep and use the same."

In doing so, he said the Government of India had had under its consideration, for some time past, the state of the Law relating to the manufacture and possession of arms and ammunition throughout India. The Law, as it stood at present, was so far defective that, though it would admit of the seizure of arms, it gave no power to ascertain by which portions of the Community arms were possessed, or to regulate the possession of arms, or to prevent their sale and manufacture. The object of this Bill was to provide, as far as was possible, for all these purposes, by putting it in the power of the Government to regulate the importation, manufacture, and sale of arms and ammunition, and to know where they were kept, and the reasons and objects of their possession.

He would state to the Council the purport of the several Sections of the Bill, premising that he did not intend that a vote for the second reading should tie any Member down to the principle of the measure. It was scarcely to be expected that the principle should be determined by the Council on the very first introduction of the Bill. The Council would have an opportunity of considering it, together with the several Sections, at greater leisure before the Motion for the third reading, and of making in the Bill, when in Committee, any alteration which it might think was expedient.

Section I provided that no person should carry or use arms without a license. It related, for the most part, to small arms.

Section II provided the form of license.

Section III declared that all arms carried, kept, or used in any public place without license, should be liable to be seized and detained, and that the persons carrying or using them might be apprehended without a warrant, if they refused to give up their names and address.

Section IV provided for the renewal of a lost license.

He had originally inserted a Section requiring persons holding licenses to give notice of change of residence; but, upon consideration, it had appeared to him that that would be a cumbrous provision, and he had accordingly omitted it. If the Council should think that it was necessary, it might be re-inserted when the Bill came before it in Committee.

Section V exempted European Military and Naval Officers, Police Officers, and certain other persons, from the obligation of taking out a license. It was a question for consideration whether several further exemptions might not be made—whether any particular class or classes of persons should not be exempted. But to him it appeared that it would be inexpedient to make any special exemption of this nature. He was perfectly satisfied that there were many sections of the Community who could be trusted by the Government with the possession of arms without being subjected to the necessity of taking out licenses. All Europeans, our East Indian brethren, many educated Native gentlemen, and (he believed he would be supported by the Honorable Member for Bombay in adding) the Parsee gentry and Community, might, he was quite sure, be allowed unrestricted possession of arms without any danger to the State. Other sections of the general Community might be added. But it appeared to him that, in a measure of legislation like this, it would be difficult to exempt particular classes without appearing invidious and exciting ill-will; and, accordingly, he had made the Bill applicable to all, merely reserving to the Governor-General in Council (by Section VI) the power of exempting from its operation any persons or classes of persons whom he should think fit.

Section VII provided that any person holding a license should produce it if required; and that, in case of refusal, he might be apprehended and fined to the extent of one hundred Rupees, and his arms might be forfeited.

Section VIII imposed a penalty of five hundred Rupees for manufacturing, selling, or keeping or exposing for sale, arms or ammunition without license, which license might be obtained under certain conditions.

Section IX required dealers to enter in their books, sales of arms, and the names and address of the purchasers.

Section X authorized Police Officers to inspect the premises of manufacturers and dealers for the purpose of examining their stock; and provided a penalty for resistance of such search, or concealment of arms.

Section XI provided a penalty for the possession of percussion caps, gunpowder, or other ammunition, without a license, except as to persons licensed to keep fire-arms, or not prohibited by Law from keeping them, for private use.

Section XII provided for the revocation or suspension of licenses granted under the Act by the Authorities who had granted them.

Section XIII provided that no arms or ammunition should be imported without the license of the Governor-General in Council, or the Executive Government, except arms or ammunition for the private use of persons authorized or licensed to keep them, or not prohibited by Law from keeping them. The want of a power to regulate the importation of arms was one of the greatest difficulties which the Government had felt in this matter.

Section XIV provided a right of search by Magistrates, or under their warrants, for arms suspected to be concealed.

Section XV empowered the Governor-General in Council, or the Executive Government, to direct a general search of arms whenever they should think fit. That was in accordance with the existing Law.

Section XVI required manufacturers and dealers, and all persons prohibited from keeping arms without license, to give notice where they kept their arms, under a penalty of five hundred Rupees.

The Vice President

Section XVII determined the Authorities by whom the licenses should be granted in different parts of India.

Section XVIII gave the right of appeal for refusal to grant license.

Section XIX prohibited the use or possession of any cannon, howitzer, or mortar without a license, under a penalty of two thousand Rupees, as also imprisonment for a term not exceeding two years, and the forfeiture of such cannon, howitzer, or mortar.

Section XX allowed rewards to be given to informers, namely, the whole, or a portion, of the fine levied, and also a sum not exceeding one-half the value of the arms or ammunition confiscated.

Section XXI defined the meaning of the word "Magistrate" as used in the Bill.

Section XXII provided that the Act should take effect in any district, city, town, or place to which it should be extended by the Governor-General in Council, or the Executive Government.

Section XXIII empowered the Governor-General in Council, or the Executive Government, to withdraw any part of a district from the operation of the Act, and, if occasion should arise, to restore it thereto.

The last Section limited the duration of the Act to two years. It had not been thought necessary to provide a more extended period; but this was a point open to further consideration.

He proposed to ask that the Bill should be read at the table. But, as he had said before, he did not wish it should be considered that any Honorable Member would be tied down to its principle or its several provisions by a vote for the second reading. The Bill would come up another day for the further consideration of the Council, in Committee; and Honorable Members would then have leisure to go over the several Sections. He did not propose to go farther than the second reading to-day The Bill would then be published for general information in due course, and might afterwards be proceeded with either leisurely or rapidly, as might be deemed advisable.

With these observations, he begged to move that the Standing Orders be suspended in respect of the Bill.

MR. GRANT seconded the Motion.

Agreed to.

THE VICE-PRESIDENT then moved the first reading of the Bill.

The Bill was read a first time, at the table.

THE VICE-PRESIDENT moved the second reading of the Bill.

MR. LEGEYT enquired, whether it would be competent to the Council to discuss the principles of the Bill when the Bill should come to be considered in Committee. Under the ordinary rule, the Council, in allowing a Bill to be read a second time, signified its approval of all the principles of that Bill. But there were some Clauses in this Bill which involved questions of principle, and which seemed to him to require consideration. Whether, for instance, it should be made incumbent upon Europeans to take out licenses for possessing arms, or whether Justices of the Peace and Magistrates should be authorized to seize arms, appeared to him to be questions of principle which required greater consideration than could be given to them at that moment; and he thought it desirable that they, and other questions of the like nature raised by the Bill, should be left open to discussion when the Bill came before a Committee of the whole Council.

MR. GRANT said, he understood the principle of the Bill to be this—the regulation of the possession of arms. If the Council was prepared to pass a Bill for regulating the possession of arms, it would support the motion for the second reading. If it was not prepared to pass a Bill for regulating the possession of arms, it would oppose that motion. When the different Sections of the Bill came to be considered in Committee, it would of course be open to the Council to insert in them any amendments which it might think fit.

THE CHIEF JUSTICE said, he had understood the Honorable Mover of the Bill expressly to say that he did not mean that the second reading of this Bill should commit any Member of the Council to the principles of the Bill in the way in which a second reading was generally understood to do. The particular objections which the Honorable Member for Bombay felt against the Bill, clearly related to matters of detail.

THE VICE-PRESIDENT said, he would repeat that no Honorable Mem-

ber would be committed to the principle of the Bill even if he voted for the second reading. On the contrary, as he had stated before, the Bill having only been introduced to-day, he thought it but right that leisure should be given for the consideration of its principle and its several provisions, and that it should be open to the Council, when sitting in Committee, to insert in it any alterations which it might think desirable. It was upon that understanding that he moved the second reading.

The Motion was carried, and the Bill read a second time.

THE VICE-PRESIDENT moved that the Bill be referred to a Select Committee consisting of the Chief Justice, General Low, Mr. Peacock, Mr. Currie, and the Mover, with instructions to the Committee to report upon it in three weeks.

MR. LEGEYT asked if the Report could not be made within a shorter time. A good deal of anxiety seemed to prevail with regard to the possession of arms, which be believed was groundless to a great extent, but which, nevertheless, it was desirable to allay, and this Bill would have the effect of allaying it. He, therefore, thought that the Bill should be passed as soon as possible, and would suggest that the Select Committee be instructed to present their Report upon it in one week.

After some conversation, the Vice-President's Motion was altered by the substitution of the words "within one week" for the words "in three weeks," and then carried.

TRANSLATION OF ACTS AND BILLS.

MR. CURRIE moved that a communication received by him from the Government of Bengal relative to the translation of the Acts and Bills of the Legislative Council be laid upon the table and referred to the Standing Orders Committee.

Agreed to.

THE DRAINAGE OF CALCUTTA.

MR. PEACOCK said, when the Calcutta Municipal Assessment Bill was under discussion before a Committee of the whole Council last year, the Honorable Member for Bengal stated that a Report on a scheme for the drainage of Calcutta was in course of preparation by the Drainage Committee. He would now ask the Honorable Member whether that Report had been sent in to the Government of Bengal? It appeared to him that the matter ought to be taken up without any further delay, so that the drainage of the town might be speedily proceeded with.

He had seen it stated in a Report published by the Municipal Commissioners, that the sum which the Council had determined should be set aside for drainage, was to be invested in Company's Paper, and the interest arising from such investment devoted to the general wants of the town. It appeared to him that when a certain sum was set apart for the drainage of the town, the interest arising from the investment of that sum ought to be applied to the same object as the principal, and to no other—it ought not, for instance, to be applied to lighting. He called attention to this fact, because it was quite clear that the interest could not be legally applied in the manner proposed by the Municipal Commissioners.

At present, he simply wished to ask the Honorable Member for Bengal whether the Report of the Drainage Committee had been sent in?

MR. CURRIE said, he had heard nothing officially on the subject; but he knew that the Drainage Committee had made their Report, because he had received a printed copy of it. Whether any order had been passed by the Bengal Government with reference to the Report, he was unable to say; but the late Secretary to the Municipal Commissioners had been appointed Engineer for the purpose of carrying out an efficient scheme of drainage, and the Commissioners had been authorized by the Bengal Government to make purchases of materials, and do all that could be done for progressing with the work.

With respect to the appropriation of the interest to be derived from the principal sum which the Council had determined should be set aside for drainage, he quite agreed with the Honorable and learned Member that it should be applied to that object wholly, and to no other.

He would make enquiries regarding the Report of the Drainage Committee,

and would be able to answer the Honorable and learned Member's question next Saturday.

SLAVERY.

MR. LEGEYT moved that a further communication received by him from the Government of Bombay, on the subject of Slavery, be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

VOLUNTARY OATHS, AFFIDAVITS, AND DECLARATIONS.

MR. CURRIE moved that the communication from the Madras Government on the subject of administering voluntary oaths and attesting affidavits and declarations in India, which was reported to the Council on the 27th of June last, and ordered, on the Motion of the Chief Justice, to be printed, be referred to the Select Committee on the Bill "to amend the Law relating to affidavits, affirmations, and solemn declarations." The Government of Fort St. George observed that, in the opinion of their Law Officer, "neither Justices of the Peace nor Magistrates in this country have authority to administer a voluntary oath." A similar opinion, he believed, had been given by the Law Officers of the Government in Calcutta. The Madras Government observed:—

"The very great public inconvenience which will be occasioned, if, as thus supposed, there be no Authority either in the Town of Madras or in the Provinces by whom oaths can be administered unless in cases coming before them judicially, or Affidavits and Declarations attested, is so palpable that this Government have resolved at once to bring the matter under the consideration of the Government of India for such notice as it may seem to require."

It seemed to him very desirable that there should be early legislation on the subject; and, with that view, he made his present Motion.

Agreed to.

MUNICIPAL ASSESSMENT (BOMBAY.)

MR. LEGEYT gave notice that he would, on Saturday the 8th instant, move the second reading of the Bill "for appointing Municipal Commissioners, and for raising a Fund for municipal purposes in the Town of Bombay."

The Council adjourned.

Saturday, August 8, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.
Hon. Major General J. Low,	E. Currie, Esq. and
Hon. B. Peacock,	Hon. Sir A. W. Buller.

FORFEITURE OF PROPERTY FOR MUTINY.

THE VICE PRESIDENT announced that the Governor General had signified his assent to the Bill "to render Officers and Soldiers in the Native Army liable to forfeiture of property for Mutiny, and to provide for the adjudication and recovery of forfeitures of property in certain cases."

ABUSE OF AUTHORITY BY PUBLIC SERVANTS.

THE CLERK reported to the Council that he had received a communication from the Acting Chief Secretary to the Government of Fort St. George forwarding a copy of a Despatch from the Honorable the Court of Directors on the subject of passing an Act regarding abuse of authority by public servants.

MR. CURRIE moved that the above communication, together with the former papers on the subject, be printed.

Agreed to.

IMPORTATION OF MILITARY STORES.

THE CLERK also reported that he had received a communication from the Officiating Under-Secretary to the Government of India in the Home Department, forwarding a copy of a letter addressed to the Madras and Bombay Governments on the subject of prohibiting the importation of Military Stores.

MR. LEGEYT moved that the above communication be printed.

Agreed to.

STRAITS' FERRIES.

MR. CURRIE presented the Report of the Select Committee on the Bill "for regulating Ferries in the Settlement of Prince of Wales' Island, Singapore, and Malacca."

MUNICIPAL ASSESSMENT (BOMBAY.)

MR LEGEYT moved the second reading of the Bill "for appointing Municipal Commissioners, and for raising a Fund for municipal purposes in the Town of Bombay."

MR. CURRIE said, he had no intention of offering any opposition to the motion for the second reading. But it was his wish to make a remark or two upon certain of the provisions of the Bill. There were two points in which the Bill differed from the Municipal Acts for Calcutta and Madras. One related to the constitution of the Municipal Body—the other to the sources from which the municipal revenue was to be derived. Besides the sources of such revenue provided by the Acts for the other Presidency Towns, the Bill proposed to raise a large sum by the levy of Town-Duties upon certain articles. If those articles were imported exclusively for consumption in the island of Bombay, he saw no objection to the levy of Town-Duties upon them. Indeed, it appeared to him that this mode of raising a revenue for municipal purposes was a very suitable one.

But with respect to the constitution of the Municipal Body which the Bill proposed, he entertained considerable doubts. It appeared that there were to be seven Municipal Commissioners, some of whom were to be elected by the Bench of Justices, who were also to exercise a control over the proceedings of the Commissioners. The Bench of Justices were also to fix, within specified limits, the annual rate upon houses, buildings, and lands. He did not object to a portion of the Municipal Body being elected by the Bench of Justices —on the contrary, he thought that it was a very good arrangement. Nor did he think that there could be any objection to allowing the Bench of Justices to fix, within given limits, what should be the amount of the house-rate. But it did seem to him unnecessary and inexpedient to give them the power of exercising any further control. He thought that, having elected the Commissioners and fixed the rate to be levied, their interference should cease, and that they should not be permitted to exercise any control over the ordinary proceedings of the Commissioners; the more so inasmuch as the Bill provided that "in the event of the Justices rejecting any measure submitted for their approval by the Commissioners, it should be lawful for the Commissioners, if they saw fit, to refer the matter to the local Government, whose decision should be final." If, therefore, there were a difference between the Commissioners and the Justices, the Commissioners would apply to the Government, which might overrule the objections of the Justices; and he thought that a control thus restricted could hardly answer any useful purpose.

Upon this question, though he agreed to the second reading of the Bill, he should reserve his consent.

MR. LEGEYT said, the Clause in the Bill which proposed to vest the Bench of Justices with control over the Municipal Body had been inserted in pursuance of the custom which had hitherto prevailed in Bombay, and which, it would be found from the papers annexed to the Bill, the local Government had, after considerable deliberation, consented to continue. This control had been with the Justices for many, many years; the proceedings of the Municipal Body had been, on the whole, well conducted under their supervision; and useful public works had been undertaken and completed under that system. He could only state that the scheme propounded by this Bill had for its recommendation the good-will and support of the whole community of Bombay; and that it would be a very great misfortune if any obstruction were thrown in its way. He trusted that the Sections of the Bill which gave a control to the Bench of Justices over the Commissioners, would be preserved in their integrity. The Bench of Justices had always enjoyed the confidence of the Public and of the Government, and their constitution more nearly approached that of a Municipality than any other body in India formed for the management of municipal matters. He himself had had the honor of

being a member of the Bench of Justices, and had acted with them for several years; and he was certain that a more intelligent, public-spirited, and liberal-minded body of men could not be placed at the head of the municipal affairs of a town. He did hope, therefore, that the Sections of the Bill which related to this point, would be passed untouched.

The Council would observe that the Bill proposed to levy Town-Duties—that is, "duties at the rates specified in the Schedule annexed to this Act,"—only "in respect of the several things therein mentioned when imported from any place into the Town of Bombay and intended for consumption or use therein." And on reference to the Schedule, it would be found that no articles were mentioned in it which were ever exported from Bombay. The only articles upon which Town-Duties would be levied were articles imported. But Bombay was a very small island. Cattle were not bred in it to any extent; very little grain was grown in its soil; chunam was not manufactured there; ghee was imported to a very considerable extent. As he had said when introducing the Bill, the scheme which it comprised had met with the cordial support of the inhabitants of Bombay, as far as their opinion could possibly be ascertained; and he trusted that the Council would think it advisable to tax them in the way which they themselves considered best for the municipal wants which had to be provided for.

MR. LEGEYT'S Motion was carried, and the Bill read a second time.

MR. LEGEYT moved that the Bill be referred to a Select Committee consisting of Mr. Currie, Sir Arthur Buller, and the Mover.

Agreed to.

PORT-DUES (CALCUTTA).

MR. CURRIE moved that, in the absence of Mr. Grant, the Chief Justice be added to the Select Committee on the Bill "for the levy of Port-dues and fees in the Port of Calcutta."

Agreed to.

PORT-DUES (MOULMEIN, RANGOON, &c.)

MR. CURRIE moved that, in the absence of Mr. Grant, the Chief Justice be added to the Select Committee on the Bill "for the levy of Port-dues in the Ports of Moulmein, Rangoon, Dalhousie, Akyab, and Chittagong."

Agreed to.

THE DRAINAGE OF CALCUTTA.

MR. CURRIE said, with reference to the question asked by the Honorable and learned Member to his right (Mr. Peacock) on Saturday last, he wished to state that he had ascertained that no orders had as yet been passed by the Government of Bengal upon the Report of the Drainage Committee.

He had also ascertained from the Municipal Commissioners that it never had been their intention to apply any interest which might accrue on the investment of the sum set aside for drainage otherwise than to that particular object. In point of fact, however, they had not yet been able to set aside any such sum. Although the scheme of drainage to be adopted had not yet been finally sanctioned, the Commissioners had been authorized to make a commencement by purchasing all necessary materials, and making arrangements for the manufacture of bricks &c. This preliminary expenditure would probably consume the whole of the amount to be appropriated to drainage during the year.

The Council adjourned.

Saturday, August 15, 1857.

PRESENT:

The Hon'ble Joseph Alexander Dorin,
Vice-President.

Hon. Major General J. Low,	E. Currie, Esq., and
Hon. B. Peacock,	Hon. Sir A. W. Buller.
P. W. LeGeyt, Esq.,	

The Members assembled at the Meeting did not form the Quorum required by Law for a Meeting of the Council for the purpose of making Laws.

Saturday, August 22, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.
Hon. Major General J. Low,	E. Currie, Esq., and
Hon. B Peacock,	Hon. Sir A. W. Buller.

THE POLICE ACT (PRESIDENCY TOWNS &c).

THE CLERK reported to the Council that he had received a communication from the Governor of the Straits Settlement pointing out certain defects in Act XIII of 1856 (Presidency Towns, &c. Police Act).

MR. CURRIE moved that the above communication, together with others previously received on the same subject, be printed.

Agreed to.

MINORS (MADRAS PRESIDENCY).

THE CLERK also reported to the Council that he had received a communication from the Acting Chief Secretary to the Madras Government on the subject of conferring on the Sudder Court, in respect of Minors placed under their control by Regulation V of 1804, the powers vested in the Court of Wards by Act XXI of 1855.

MR. CURRIE moved that the above communication be printed.

Agreed to.

ARMS AND AMMUNITION.

MR. PEACOCK presented the Report of the Select Committee on the Bill "relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same."

PORT-DUES (CUTTACK).

MR. CURRIE moved the first reading of a Bill "for the levy of Port-dues in certain Ports in the Province of Cuttack." He said, he had already introduced into the Council Bills for the levy of Port-dues at all the important Ports of the Bengal Presidency. The present Bill had reference to certain small Ports in the Province of Cuttack, which were frequented exclusively by native craft employed in the coasting trade. They were all situated within a coast line of about seventy miles, and were under the supervision and control of the Master Attendant at Balasore. The Vessels belonging to these Ports, and all other vessels which touched at them in the course of the year, were subject to an annual cess graduated according to a certain scale. Vessels under two thousand maunds were charged eight Rupees; from two thousand to five thousand maunds, ten Rupees; and above five thousand maunds, fifteen Rupees. But the produce of this cess was not by any means sufficient to defray the expenses of the Master Attendant's establishment, and of the buoys maintained at some of the Ports. A considerable portion of the vessels belonging to these Ports was annually taken up by Government for the conveyance of Salt from Balasore to Sulkea, and was by custom exempt from payment of the cess. It was now proposed to do away with that exemption, and to substitute for the annual cess a Port-due leviable upon each voyage. According to the best calculation he had been able to make, a Port-due of four annas the hundred maunds, equal to a little more than one anna the ton, would produce a revenue sufficient for the wants of the Ports.

As the vessels to be affected by the Bill would be exclusively native craft, it was convenient to fix the rate of the Port-due by maunds rather than by tons.

As all the Ports were under the supervision of the same establishment, it was scarcely practicable to estimate the separate cost of each. It was therefore necessary, in assessing a Port-due, to treat them as if they were parts of one Port, and to have a uniform rate for all.

The trade of these vessels was entirely with Calcutta, and many of them made as many as four trips in the year.

He proposed to allow the dues leviable on each voyage to be compounded for by the payment, for any one year, of a sum equal to three times the rate leviable for a single voyage.

With these remarks, he begged to move the first reading of the Bill.

The Bill was read a first time.

FERRIES (STRAITS SETTLEMENT.)

MR. CURRIE moved that the Council resolve itself into a Committee upon the Bill "for regulating Ferries in the Settlement of Prince of Wales' Island, Singapore, and Malacca;" and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

Agreed to.

Sections I to VIII were passed as they stood.

Section IX provided that bye-laws for regulating Ferry-boats &c. should be made by the Chief Civil Authority of each Station.

SIR ARTHUR BULLER asked why this particular power should be vested in the Chief Civil Authority of each Station? Section XII said—"Every public Ferry shall be under the control and management of the Municipal Commissioners of the Station in which the same is situate." If the public Ferries were to be under the control and management of the Municipal Commissioners, he should have thought that the Municipal Commissioners were the parties who ought to make the rules for regulating them, subject to any confirmation which might be deemed expedient. Indeed it would be difficult to say that substantial control or management was left to them if this power of making rules were given to another party. He had no doubt that the Honorable Mover of the Bill would be able to give a ready answer to his question; but at present he did not quite see the reason for creating this divided authority.

MR. CURRIE said, Section XII had been altered by the Select Committee, who, as stated in their Report, thought it advisable to vest the control and management of the Ferries and the collection of the tolls expressly in the Municipal Commissioners, and to give to them, subject to the approval of the Governor, the power of letting the tolls in farm. They had not thought it necessary to alter Section IX, because they were of opinion that the rules might very properly be made by the Chief Civil Authority, and their administration left to the Municipal Commissioners. He should make no objection to an alteration of the Section if the Honorable and learned Member thought it necessary; but it appeared to him that it would be better to leave the Section as it stood.

THE CHIEF JUSTICE said, it seemed difficult to see what the Municipal Commissioners were to do. As the Section stood, the Chief Civil Authority was not to make the rules, except subject to confirmation by the Governor of the Settlement. If the Municipal Commissioners of each Station were to have the management and control of the public Ferry established in that Station, they would doubtless be the best persons to suggest the mode in which it should be managed and controlled.

MR. CURRIE said, it would be the business of the Municipal Commissioners to see that the rules were duly observed, and to prosecute for any violation of them. It would also be their business to superintend the collection of the tolls. All control and management must be exercised according to some laws or rules; and if bye-laws or rules for regulating these Ferries were made by the Chief Civil Authority, he imagined that the Municipal Commissioners could see them carried out just as well as if they had been made by themselves.

The Section was then put, and agreed to.

Section X provided that any person who should carry for hire within three miles of a public Ferry, without a special license from the Chief Civil Authority, should be liable to a penalty not exceeding fifty Rupees.

THE CHIEF JUSTICE said, he felt some difficulty about this Section. Section II allowed the Governor of the Settlement to fix the rate of toll upon all passengers, goods, or cattle carried over by a public Ferry. Now, it might be reasonable enough to say that the Governor, when he chose to set up a public Ferry, should be trusted with the power of determining what should be paid for the conveyance of passengers, goods, or cattle by it, if you left the public the option of using some other mode of conveyance in case the rates imposed were exorbitant. But when the Bill went on to provide that no other person should carry for hire within three miles of a Ferry without a special license, it really gave the Governor an unlimited power of taxing transit

from one part of the Settlement to another.

MR. CURRIE said, Section X, like most of the other Sections, had been taken from the Act which was in force at Bombay. A provision similar to it also existed in the Bengal Regulation. Some restriction of the kind prescribed by the Section was, he thought, necessary. If boats were allowed to ply for hire in the immediate neighbourhood of public Ferries, public Ferries would cease to exist. As to fixing a limit to the rates of toll, unless the nature of the Ferries was known exactly, which was not the case, such limit could not well be fixed. No limit was fixed by either the Bengal or the Bombay Regulation

THE CHIEF JUSTICE said, he had mistaken the object of the Section. He now saw that it was intended to prevent persons from setting up opposition Ferries.

MR. PEACOCK said—still, he saw considerable difficulty in passing the Section as it stood. He did not know precisely the localities to which the Bill was intended to apply; but there must be a road leading to a Ferry, and a road leading from it. Suppose that a public Ferry was established on a creek within the Settlement, to ply between road A on one side, and road B on the opposite side; and that a person wished to go across, not to B, but to some other road leading to a different place within three miles of it. This Section would prevent him from getting a boat to carry him over, and would leave him to go to the public Ferry at A, which would take him to the wrong place. He would illustrate his meaning by supposing a similar case in Calcutta. A person, for instance, might wish to go from Garden Reach to the Botanical Gardens. The Honorable Mover of this Bill would tell him—"No, there is a public Ferry within three miles of Garden Reach, and you must go up to that, and cross in it to Howrah." But when the passenger should arrive at Howrah, he would not be able to get to the Botanical Gardens.

THE CHIEF JUSTICE said, he knew some of the localities which this Bill would embrace, and saw great force in the Honorable and learned Member's objection. This Section included an arm of the sea. As all of us knew, a narrow arm of the sea runs between the Island of Penang and Province Wellesley. Suppose that a public Ferry were established between those two points. In Province Wellesley, there was a number of sugar estates, cocoanut plantations, &c. running, he believed, parallel with the arm of the sea. It would be rather hard to enact that no boatman should carry a person wishing to go from Penang to see his estate or plantation in Province Wellesley, within three miles of the public Ferry, by taking his boat across the arm of the sea.

MR. CURRIE said, the Bill had been read a first time on the 20th September 1856; it had been published for considerably more than the allotted term; no objection had been taken to its provisions by the inhabitants of the Straits Settlement; and the Governor had intimated his approval of them, stating that he considered them "to be well suited to the circumstances of the case." The Section in question corresponded precisely with the Section in the Bombay Act, with the exception that the penalty it provided, instead of being five hundred Rupees, was only fifty Rupees, the prohibited distance being the same. In the Bengal Regulation, however, the wording was different. The Section there said:

"Such Ferries shall exclusively belong to Government; and no person shall be allowed to employ a Ferry-boat plying for hire at or in their immediate vicinity, without the previous sanction of the Magistrate or Joint-Magistrate."

Perhaps the wording of the Section might be assimilated to that of the Bengal Regulation.

MR. PEACOCK remarked that Section contemplated boats habitually employed as Ferry-boats but the Section in this Bill would make it an offence to let for hire a boat to carry a person across within three miles of a public Ferry though there might be no intention to interfere with the Ferry, or to evade the toll payable for passing.

THE CHIEF JUSTICE then moved that the following Proviso be added to the Section:—

"Provided that nothing in this Section shall subject to such penalty any person who shall specially let for hire his boat for the conveyance of any other person, or his family or goods, across any arm or creek of the sea within the said Settlement."

The amendment was agreed to, and the Section then passed.

The remaining Sections of the Bill, with the Preamble and Title, were passed as they stood.

MADRAS UNIVERSITY.

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "to establish and incorporate an University at Madras;" and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

Agreed to.

The Bill passed through Committee as it stood.

ARMS AND AMMUNITION.

THE VICE-PRESIDENT moved that the Council resolve itself into a Committee on the Bill "relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same;" and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

Agreed to.

Section I required notice of possession of arms to be given "to the Magistrate, or, in any Presidency Town or in any station in the Settlement of Prince of Wales' Island, Singapore, and Malacca, to the Commissioner of Police."

MR. LEGEYT said, he thought that, with reference to the operation of this Bill in Bombay, it would be useful to insert, after the words "to the Magistrate," the designation of the Officer there who superintends the Police of the Zillahs. There was at Bombay a European Officer, under the title of Superintendent of Police, to whom was entrusted the full supervision of the Zillah Police; and it was very desirable that, in that Presidency, the notice contemplated in this Section should be given to him. He should, therefore, move that the words "or the Superintendent of Police, if any" be inserted after the words "to the Magistrate" in the 12th line of the Section.

MR. CURRIE said, he thought it would less embarrass the Bill if a Section were inserted at the end of it saying that whatever powers the Bill conferred upon Magistrates, might also be exercised by a Superintendent of Police where there was such an Officer.

MR. PEACOCK said, the expediency of doing this had been considered in Select Committee. It appeared to him that it would be objectionable to do it, because it would give Superintendents of Police judicial powers.

MR. LEGEYT said, that would be the effect, since there were Sections in the Bill conferring judicial powers upon Magistrates as well as Sections conferring executive powers; and he had no wish to vest judicial powers in a Superintendent of Police.

He should, therefore, still move to amend Section I; but it had been suggested to him that the words "or other Officer authorized by the Executive Government" would be preferable to the words he had proposed to insert, and he agreed in thinking that they would be. He, accordingly, begged leave to withdraw his former motion, and to move that those words be inserted after the words "to the Magistrate" in the 12th line of the Section.

Agreed to.

MR. CURRIE said, the arms in respect of which notice was to be given, were stated in the Section to be "any fire-arms, bayonet, sword, spear, or spear-head." This would hardly embrace all weapons the possession of which, under certain circumstances, it might be thought proper to prohibit—he might instance daggers, *kookrees*, &c. The enumeration in the Section was similar to the enumeration in the Police Act; but in that Act, the enumeration was followed by the words "or other offensive weapon." He thought that it would be an improvement if the words "or other deadly weapon specified in such order" were added after the word "spear-head." He should move, accordingly, that they be inserted.

The amendment was agreed to, and the Section then passed.

Section II provided that whoever should wilfully neglect to give the notice required by Section I, should be liable "to a penalty not exceeding five hundred Rupees; and the arms of which no such notice shall be given, may be seized and shall be confiscated, if the convicting Magistrate shall so adjudge."

MR. PEACOCK said, if a person gave notice on a particular date, of arms which were then in his possession, but should omit to give notice of arms of a similar description which should subsequently come into his possession, it would be difficult to ascertain which were the arms of which he had given notice, and which the arms of which he had not given notice. For instance, if A should give notice on the 10th of September that he had one gun, and should get two more guns on the 15th, of which he should not give notice, it would be difficult for the Magistrate to say which of the three was the one in respect of which the notice had been given. It appeared to him (Mr. Peacock) that if a person wilfully neglected to give notice, he ought to be made liable to the loss of all the arms in his possession. If the omission to give notice should be unintentional, A would not be guilty of an offence; and it would not be obligatory on the Magistrate in any case to confiscate all. He should therefore move that the words "the arms of which no such notice shall be given" be left out, and that the words "all arms in the possession of such person" be substituted for them.

THE CHIEF JUSTICE said, any objection which he might feel to the amendment of the Honorable and learned Member, was removed by the words "wilfully neglects" used in the Section. If a person made a return that he had one pistol, and, by a mere oversight, omitted to send in a return of two other pistols with which he might afterwards have provided himself, it would be hard to deprive him of all three pistols. But if he wilfully neglected to make the return, that would shew him to be a person who wished to evade the Law; and against such persons, confiscation of all arms in their possession might justly be enforced.

MR. PEACOCK'S amendment was carried, and the Section then passed.

Section III provided that "the Magistrate or Commissioner of Police" should cause a register to be prepared of persons having arms in their possession, and the number and description of such arms; and also grant certificates upon application.

MR. LEGEYT proposed that some words should be inserted after the words "Commissioner of Police" to shew who was meant by that designation. Section I did shew this, to some extent; for it mentioned the Commissioners of Police in Presidency Towns; but in the Presidency of Bombay there was an Officer under that designation who was totally distinct from the Commissioner of Police for the Presidency town. He was a Mofussil Commissioner of Police; and it would lead to some confusion and trouble if the Bill were left so as to allow him to exercise the power which was given by this Section, and which was intended only for Magistrates and Commissioners of Police in the Presidency towns. He, therefore, proposed to move amendments which would make the Section run thus:—"The Magistrate, or such Commissioner of Police as aforesaid"—that was to say, the Commissioner of Police for a Presidency town.

The proposed amendments were severally moved, and, after some conversation, agreed to; and the Section was then passed.

Section IV was passed after similar amendments, and a verbal alteration.

Section V authorized certain Officers to disarm persons going armed without leave in places other than Presidency towns.

MR. LEGEYT moved that the words "or other Officer authorized by the Executive Government in that behalf" be inserted after the word "Magistrate" and before the word "the" in the 16th line of the Section.

Agreed to.

SIR ARTHUR BULLER said, he had an addition to suggest in the 16th line of the Section. The Bill, as it stood, allowed Police Officers, among others, to disarm all who went armed, except those who should have had leave from a Magistrate to carry arms, and certain other privileged persons. Therefore, if a Police Officer should arrest any one going about armed who happened to have had leave from a Magistrate, or to be permitted by the Government to carry arms, he would commit a trespass. But how was the poor man to know that the person he arrested had obtained leave from a Magistrate, or had been permitted by the Government to carry arms? Therefore, he proposed that before any person could claim pro-

tection under this Section, he should produce his authority to carry arms. With that view, he should move that the following words be inserted after the word "shall" in the 16th line of the Section:—

"unless he shall produce some certificate that he has obtained such leave, or that he is exempted by Government from the foregoing provisions; or shall give reasonable proof of his being otherwise exempted from the said provisions."

Agreed to.

MR. CURRIE said, it had been suggested to him that the words "the Magistrate" in the Section must be taken to mean the Magistrate of the district or place in which the person might happen to be found carrying arms; and that, on that construction, a certificate of leave to a person on a journey, from the Magistrate of the district from which he had set out, would be of no avail to him, as the Section now stood, at any place between that district and his destination. To prevent any such inconvenience, he should move that the following Proviso be added to the Section:—

"Provided always that, if any person shall have leave from the Magistrate of the district or place at which he resides or may be, to carry arms on a journey, and shall obtain from such Magistrate a certificate stating the route by which he intends to proceed, the time which such journey is expected to occupy, and the arms which he is permitted to carry, such certificate shall have the same force and effect, according to its tenor, in every district or place specified therein, as if leave to go armed had been granted by the Magistrate of such district or place."

THE CHIEF JUSTICE asked if the Honorable Member's object would not be met by simply altering the words "the Magistrate" now in the Section to "a Magistrate."

MR. CURRIE said, the words originally *were* "a Magistrate," but "the" was substituted for "a" in Select Committee. The Section as it stood originally might be too general, for a license once obtained from a Magistrate would carry a man all over India.

MR. CURRIE'S amendment was agreed to, and the Section then passed.

Sections VI and VII were passed as they stood.

Section VIII provided that licenses to manufacture or deal in percussion-caps should be granted by the Governor-General in Council, or by the Executive Government, or by an Officer specially authorized; and that licenses to manufacture or deal in arms should be granted by a Magistrate or Commissioner of Police, or by an Officer authorized by the Governor-General in Council or the Executive Government.

MR. LEGEYT said, it appeared to him that to make it incumbent on every shop-keeper who sold a box of percussion-caps to take out a license from the Governor-General in Council or the Executive Government, would be attended with unnecessary trouble and inconvenience. It was very proper that such a restriction should be imposed upon the manufacture and the wholesale disposal of percussion-caps; but the power of granting licenses for retail sale might, he thought, be safely entrusted to local Magistrates or Commissioners of Police as in the case of other ammunition and of arms.

THE VICE-PRESIDENT said, the difference had been advisedly made, because it was thought desirable to render the sale of percussion-caps more difficult than the sale of other ammunition or of arms. The Honorable Member would see, however, that the Section empowered the Governor-General in Council or the Executive Government specially to authorize any Officer to grant licenses for the sale of percussion-caps.

The Section was then passed as it stood.

Sections IX to XIII were passed as they stood.

Section XIV declared that Section XII (which prohibited the importation of arms, ammunition, sulphur, or saltpetre without license) and Section XIII (which provided the penalty for importation without license) should not apply to arms and ammunition imported for private use; but that the Collector of Customs might detain such arms or ammunition until he should receive orders of Government.

MR. PEACOCK said, this Section might be taken by some to mean that giving notice to the Collector of Customs would relieve them from the obligation of giving the notice to a Magistrate required by Section I. That, however, was not intended; and to prevent misunderstanding in the matter, he moved

that the following be added to the Section:—

"Nothing in this Section shall exempt any person from the obligation of giving notice of arms under the provisions of Section I."

The amendment was agreed to, and the Section then passed.

Section XV provided that the Governor-General in Council might prohibit the transport of "arms, ammunition, or military stores, or any particular description of arms, ammunition, or military stores, including sulphur and saltpetre, from one part of India to another."

MR. PEACOCK said, the wording of the Section was not quite accurate. Its meaning was that the terms "ammunition or military stores" should be deemed to include sulphur and saltpetre; that was to say, that the Government might prohibit the importation of ammunition or military stores if the military stores included sulphur and saltpetre. On this view of the reading, it might be contended that the Section gave no power to the Government to prohibit the importation of ammunition or military stores, unless the ammunition or military stores had sulphur and saltpetre with them. He, therefore, proposed to move amendments which would make the Section run thus:—

"The Governor-General in Council may by order prohibit the transport of arms, ammunition, military stores, sulphur, or saltpetre, or any particular description of arms, ammunition, or military stores, from one part of India to another."

The amendments were severally moved, and agreed to.

MR. PEACOCK said, there might be cases in which the Government would see fit to allow arms or ammunition to be transported from one part of the country to another, subject to certain conditions; and to provide for such cases, he moved that the following be inserted after the word "order" in the 10th line of the Section—

—"or prohibit the transport thereof except according to such rules and conditions as may be specified in the order."

The amendment was agreed to, and the Section then passed.

Section XVI provided the penalty for prohibited transport.

MR. PEACOCK said, in answer to a question from the Chief Justice, that the first member of the Section, which provided a fine not exceeding five hundred Rupees and the confiscation of the articles, applied to openly transporting or attempting to transport—and the second, which provided imprisonment with or without hard labor in addition to fine and confiscation, to smuggling or attempting to smuggle. In the latter case, in addition to the offence of transporting, there would be the offence of concealing.

The Section was passed, after some verbal amendments.

Section XVII authorized Government "to prohibit the sale of sulphur without license, and require all persons having sulphur in their possession to give notice thereof," under a penalty not exceeding five hundred Rupees.

MR. PEACOCK said, he thought that the Section did not go far enough. It said—

"Whenever the Governor-General in Council, or the Executive Government, shall consider it necessary so to do, they may by order prohibit the sale of sulphur without license, and require all persons having sulphur in their possession, to give notice thereof, &c."

The object of the Government was, not to license the sale of sulphur, which was the meaning of this wording, but to prohibit its sale altogether, except in particular cases—such as that of a person requiring it for the manufacture of sulphuric acid, or for some other purpose than that of manufacturing gunpowder; when they might grant special licenses, under certain conditions—as, for instance, the inspection of the premises in which the sulphur might be kept, &c. He should, therefore, move that the words "without license" be left out of the Section, and the word "may" be inserted before the word "require."

THE CHIEF JUSTICE said, he would prefer to keep the Section as it stood, and to specify in it who were to be the Authorities to grant licenses. The Council had done that in the case of percussion-caps; and it was of greater importance to put a check upon the sale of that article than upon the sale of sulphur, which was used for so many purposes other than the manufacture of gun-powder. It appeared to him that it was a stronger thing to say—"We will prohibit you from selling sulphur, reserving to the Government the right of

granting exemption under certain conditions"—than to say—"If you continue to sell sulphur, you must take out a license," which implied that the seller had a *primâ facie* right to a license.

MR. PEACOCK'S amendments were then put, and carried.

MR. PEACOCK moved that the following be added to the Section:—

"and all sulphur belonging to such persons shall be confiscated, if the convicting Magistrate shall so adjudge."

It appeared to him that, if the Law required a person having sulphur in his possession to give notice of the fact, and he neglected to give such notice, his sulphur ought to be liable to confiscation, as arms were made liable by a preceding Section.

The amendment was agreed to, and the Section then passed.

Section XVIII was passed after an amendment.

Section XIX was passed as it stood.

MR. PEACOCK moved that the following new Section be introduced after Section XIX:—

"The Government may exempt any person from the provisions of Sections XVII and XVIII upon such conditions, if any, as such Government may consider necessary."

Agreed to.

Section XX authorized "any Magistrate or Commissioner of Police," upon reasonable cause for suspicion, to enter and search houses "for arms or ammunition liable to confiscation." It also authorized a Magistrate to delegate this power to any of his European Assistants.

After amendments similar to those introduced into Section III on the motion of Mr. LeGeyt—

MR. PEACOCK moved amendments by which sulphur was included in the Section.

The amendments were severally agreed to.

MR. LEGEYT moved that the words "or to any Superintendent of Police subject to his orders" be inserted after the words "to his European Assistants," with special reference to the system at Bombay.

MR. PEACOCK said, the power conferred by the Section was the power of entry and search; and he doubted whether it should be competent to a Magistrate to delegate that to a Superintendent of Police.

MR. LEGEYT said, the Superintendent of Police at Bombay had the power of apprehension of offenders, and search for stolen goods.

THE CHIEF JUSTICE observed that the Presidency of Bombay seemed to have a nomenclature peculiar to itself.

MR. LEGEYT said, the office of Superintendent of Police as it existed at Bombay, did not exist at either of the other Presidencies. It was an office of recent creation, and was filled either by a Commissioned Officer in the Army or an Uncovenanted gentleman. The Superintendent had the control of the whole of the Executive Police of the Zillah, and had Magisterial powers, which, however, were confined to apprehension of offenders and search for stolen goods. He was the person who apprehended offenders, collected witnesses, and brought all the parties before the Magistrate—in fact, he was the Head of the Executive Police force, and his salary was between eight hundred and one thousand Rupees per month.

THE CHIEF JUSTICE said, he saw no objection to allow these powers to an Officer such as the Honorable Member had described the Superintendent of Police in the Presidency town of Bombay to be; but he did object to the introduction of the general term "Superintendent of Police" which, in the other Presidencies, might mean a very inferior and different Officer. The Honorable Member might introduce a separate Section at the end of the Bill to say that the words "Commissioner of Police" as used in the Bill, should apply only to the Superintendents of Police in the Presidency of Bombay.

The Section was then passed, as amended on the motion of Mr. Peacock.

Section XXI authorized "the Governor-General of India in Council, or the Executive Government of any Presidency or place, or the Chief Commissioners of the Punjaub and Oude respectively, or the Commissioner of Nagpore, or any other persons authorized by Government," to order a general search "for arms."

MR. LEGEYT moved amendments by which the Commissioner of Scinde was included in the Section.

The amendments were severally agreed to.

MR. PEACOCK moved an amendment by which "ammunition or sulphur" may also be made the subjects of an order for search.

The amendment was agreed to, and the Section then passed.

Section XXII provided the penalty for not producing or for concealing arms or ammunition when search was made.

It was passed after an amendment making it applicable to sulphur also.

Section XXIII provided the penalty for making, using, or keeping cannon &c. without license.

MR. CURRIE said, it might happen that, at the time this Act was extended to a particular district, some Zemindars or others residing in the district might be in possession of small pieces of cannon which they would rather get rid of than take out licenses to retain. The Section, as it stood, did not give the option of surrendering the arms in such cases. He thought it desirable that the option should be given; and begged to move that the following be inserted after the word "Government" in the 21st line of the Section:—

"Any person who has in his possession any cannon, howitzer, or mortar at the time when this Section takes effect in any district or place, and who shall be unwilling to apply for a license to retain possession thereof, may surrender the same to the Magistrate or Commissioner of Police within such period as aforesaid."

The amendment was agreed to, and the Section then passed.

Sections XXIV and XXV were passed as they stood.

Section XXVI said—

"The word 'Magistrate' shall include a person exercising the powers of Magistrate, and a Justice of the Peace; and every person hereby made punishable by a Justice of the Peace may be punished upon summary conviction."

MR. LEGEYT said, he thought that the latter part of the Section was likely to lead to trouble and confusion in Bombay. He alluded to the words "Justice of the Peace." Perhaps, in this Presidency and at Madras, they would not be found to be inconvenient; but in the Presidency of Bombay, there were three hundred and forty-five Justices of the Peace, two hundred and seventy-eight being Europeans, and sixty-seven Natives. Of this latter number, twenty-six were officials in the Mofussil. He could not think that it was the intention of the Council that any of these twenty-six gentlemen, resident in the Mofussil, and filling offices such as those of Principal Sudder Ameen and Sudder Ameen, should be vested with the powers which this Bill gave. Many of the European Justices, also, might leave the Presidency town for Poona and other places of public resort, at particular seasons of the year; and he thought that even if they should think it necessary to exercise, as Justices, the powers given by this Bill, they might come into conflict with the established local Courts. He would leave it only to the stipendiary Magistrates to enforce the provisions of this Act; and he should move to amend the Section accordingly.

THE CHIEF JUSTICE said, he could not see any ground for the amendment proposed. The object of the Section was to enable Justices of the Peace to deal with the offences created by the Act in a summary way; and it appeared to him that any such inconvenience as that which the Honorable Member supposed would occur in Bombay, might be entirely obviated by the mere addition of the words "having jurisdiction to try and convict for any offence in a summary way in that place" after the words "a Justice of the Peace."

MR. LEGEYT said, any of the three hundred and forty-five Justices of the Peace scattered over the Presidency of Bombay would have that jurisdiction as such Justices.

THE CHIEF JUSTICE said, he begged to deny that they had the slightest power of summary conviction, if they were beyond the limits of the Presidency town. Under the 33 Geo. III. c. 52, almost every Covenanted Officer of the East India Company, and under the 2 and 3 William IV, c. 117, many native subjects had been appointed Justices of the Peace; but they were only conservators of the Peace, and had no power of summary conviction out of the Presidency, where it was not specially given to them.

MR. PEACOCK said, he had always thought that it was contrary to Law for native subjects to exercise the powers of Justices of the Peace in any place beyond a Presidency town. Statute 33 Geo. III. c. 52 provided—

"That it shall and may be lawful to and for the Governor-General in Council of Fort William in Bengal for the time being to nominate and appoint such and so many of the Covenanted Servants of the said Company, or other British Inhabitants, as the said Governor-General in Council shall think properly qualified, to act as Justices of the Peace within and for the said Provinces and Presidencies, and places thereto subordinate respectively."

A similar power was given to the Governor in Council of Madras and Bombay respectively by the 47 Geo. III. c. 68.

These Acts were amended by the 2 and 3 William IV. c. 117, which provided—

"That it shall and may be lawful for the Governor-General of Fort William in Bengal, the Governor in Council of Fort St. George, and the Governor in Council of Bombay respectively, to nominate and appoint any persons resident within the territories aforesaid, and not being the subjects of any foreign state, whom the said Governor-General in Council and Governors in Council respectively shall think properly qualified, and who will bind themselves by such oaths or solemn affirmations as may from time to time be prescribed in that behalf by the said Governor-General in Council and Governors in Council respectively, to act *within and for the Towns of Calcutta, Madras, and Bombay respectively* as Justices of the Peace."

The Statute of Geo. III. only authorized covenanted servants of the East India Company, or other British inhabitants, to be appointed Justices of the Peace within the different Presidencies. That was found to be insufficient; and the Statute of William IV. enacted that any person might be appointed a Justice of the Peace for *a Presidency town;* but it gave no authority for such an appointment for any place beyond a Presidency town. It confined Native Justices of the Peace to the towns of Calcutta, Madras, and Bombay. If, therefore, there were any Native Justices of the Peace in Bombay beyond the Presidency town, it appeared to him that they must have been appointed without any authority of Law.

In the Bombay Railway Act (III of 1853), he had made offences committed against it, and to which a penalty was attached, punishable by "a Magistrate," without adding that a "Justice of the Peace" was included in that term. A question was raised at Bombay whether such offences were punishable by Magistrates of Police there; and it was decided that a Police Magistrate was not a Magistrate, but only a Justice of the Peace; and that he acted as a Police Magistrate merely by virtue of his being a Justice of the Peace. The decision was referred to the Government of India. It appeared to him at the time that a Police Magistrate was a Magistrate within the meaning of the Act; but he did not think it worth while to drive the Railway Company to an appeal when all doubt might at once be removed by a supplemental Act. Accordingly, an Act was passed to enable Justices of the Peace in Bombay to punish under the Act for offences to which a pecuniary penalty or forfeiture was attached. Another question also arose—namely, whether a Justice of the Peace acting as such could punish upon summary conviction. A Report of the Indian Law Commissioners was brought under consideration, in which Mr. Amos had entered elaborately into the question, and from which it appeared to be very doubtful whether a Justice of the Peace could convict summarily unless he had special authority to do so. Accordingly, words were introduced into the supplemental Act to meet that view. This was the origin of the introduction of the Clause to which allusion had been made in this and other similar Acts.

MR. LEGEYT replied, he was not prepared to say that the Native Justices to whom he had referred as residing in the Mofussil in Bombay, exercised the powers of Justices of the Peace. Perhaps they held the rank as only an honorary one, and performed the duties attached to it on their visits to the Presidency town.

After some conversation—

MR. LEGEYT moved amendments which made the Section run thus:—

"The word 'Magistrate' shall include *any* person exercising the *full* powers of Magistrate, &c."

The amendments were severally agreed to.

THE CHIEF JUSTICE moved that all the words after the word "Magistrate" in the 2nd line of the Section be omitted, in order that the following might be substituted for them:—

"and all powers of conviction and confiscation upon conviction given by this Act to a Magistrate, shall, within the Presidency Towns, and

in the Straits Settlement, be exercised by the Police Magistrates."

The amendment was agreed to, and the Section then passed

Sections XXVII to XXIX were passed as they stood.

Section XXX was passed after amendments.

The Preamble and Title were passed as they stood.

The Council having resumed its sitting, the Bills settled in Committee were reported.

THE VICE-PRESIDENT said, under ordinary circumstances, he should have proceeded with the Arms and Ammunition Bill to-day. But so many alterations had been made in it in Committee that he thought it better that it should be reprinted for general information. He should therefore move that the Bill, as amended by the Committee of the whole Council, be published in the *Gazette* for general information.

Agreed to.

LIQUOR LICENSE (BOMBAY).

MR. LEGEYT moved that a communication received by him from the Government of Bombay, respecting licenses to retail liquor in that Town, be laid upon the table and referred to the Select Committee on the Bill "for appointing Municipal Commissioners, and for raising a Fund for Municipal purposes in the Town of Bombay."

Agreed to.

The Council adjourned.

Saturday, August 29, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.
Hon. Major General J. Low,	E. Currie, Esq. and
Hon. B. Peacock,	Hon. Sir A. W. Buller.

STRAITS' FERRIES.

MR. CURRIE moved the third reading of the Bill "for regulating Ferries in the Settlement of Prince of Wales' Island, Singapore, and Malacca."

The motion was carried, and the Bill read a third time.

MADRAS UNIVERSITY.

MR. LEGEYT moved the third reading of the Bill "to establish and incorporate an University at Madras."

The motion was carried, and the Bill read a third time.

ARMS AND AMMUNITION.

On the Order of the Day being read for the third reading of the Bill "relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same"—

THE VICE-PRESIDENT moved that the Bill be recommitted, for the purpose of considering proposed amendments.

Agreed to.

Section I required notice of possession of arms to be given to the Magistrate, or other Officer authorized, or, in the Presidency Towns or in the Straits Settlement, to the Commissioner of Police.

MR. PEACOCK moved that the word "authorized" after the word "Officer" in the 11th line of the Section be left out, in order that the word "specified" might be substituted for it.

MR. CURRIE said the words "or other Officer authorized" were not in the Bill before it was committed last Saturday. They were inserted on the motion of the Honorable Member for Bombay, with the view of making it lawful for notice of possession of arms to be given to the Superintendents of Police in that Presidency. It now appeared to him (Mr. Currie) that it would be better to omit the words from this Section, and to provide in another manner for the object which the Honorable Member had in view. As the Bill stood, it did not provide effectually for that which was intended. The words introduced into this Section would enable Superintendents of Police to receive notices. But there were no such words in Section III, which empowered "the Magistrate or Commissioner of Police" to cause a register to be prepared, and to grant certificates; nor in Section IV, which empowered "the

Magistrate or Commissioner of Police" to seize arms and ammunition; so that a Superintendent of Police, though he might be authorized to receive notice of the possession of arms, could neither cause a register to be kept, nor grant certificates, nor seize arms and ammunition. There was also, in another part of the Bill, a Section which provided for search for arms; and if the Superintendents of Police were to have any powers under the Bill, they certainly ought to have the power conferred by Section XXI. It would be better to omit the words "or other Officer authorized" in Sections I and V, and introduce at the end of the Bill some such words as these:—

"Whenever in any Presidency or place the immediate control and superintendence of the Police is vested in any person other than the Magistrate or such Commissioner of Police as aforesaid, all or any of the acts which, by Sections I, III, IV, V, and XXI of this Act, the Magistrate or Commissioner of Police is authorized or required to perform, may be performed by such person, if the Executive Government shall so direct."

MR. PEACOCK said, he should have no objection to the introduction of the Section proposed; but the word "authorized" was not correct. A Magistrate was not authorized by the Section to do anything except by implication that, if a person was bound to give notice to a Magistrate, the Magistrate would be authorized to receive it. He thought that the words in this Section which the Honorable Member proposed to omit, should, with the amendment he had moved, be retained.

MR. LEGEYT said, he had no objection to the amendments proposed by the Honorable Member for Bengal. He had had some doubts as to whether it was necessary that the powers given by Sections III and IV should be vested in the Superintendents of Police. But if it was intended to vest them either in the Superintendents of Police or the Magistrates, it might be useful to insert the amendments, since they would prevent any conflict between those Officers.

MR. PEACOCK'S amendment was put, and carried, and the Section then passed.

Section II provided a fine not exceeding five hundred Rupees, and confiscation of arms, for not giving notice of possession.

MR. PEACOCK said, since last Saturday, he had seen a letter from the Advocate General suggesting that this penalty would be inadequate in certain cases. The penalty had been fixed with reference to cases in which the quantity of arms might be small. But if a person should have in his possession a large quantity, and should wilfully neglect to give notice, he could have but one object in concealing the fact from the Government—namely, that the arms might be used against the public peace; and, certainly, a severer penalty than confiscation and a fine of five hundred Rupees ought to be provided for such cases. He should, therefore, move that the following words be added to the Section:—

"And in case the arms of which he shall so neglect to give notice, shall exceed what may be considered reasonable for the private use of such person, he shall be liable to imprisonment with or without hard labor for a term not exceeding two years, and shall also be liable to a fine not exceeding five thousand Rupees; and all the arms and any ammunition or military stores in the possession of such person, or on his premises, shall be confiscated."

The Section as it now stood allowed the Magistrate to confiscate or not, as he might think fit; but it appeared to him that, where the quantity of arms was large, and the neglect to give notice wilful, the arms should be confiscated as a matter of course, and that it should be only in the power of the Government to give them up.

He had made the amendment applicable to ammunition also, because he thought that, the intention of a person concealing any considerable quantity of arms being to use them for a bad purpose, any ammunition found on his premises should also be confiscated to Government.

The amendment was agreed to, and the Section then passed.

Section V provided for the disarming of persons being armed without leave of the Magistrate in any place "other than the places in which Section XLVII of Act XIII of 1856 * * is in force."

MR. PEACOCK said, he had an amendment to move in this Section, also at the suggestion of the Advocate General. By Act XIII of 1856, which was the Police Act for the Presidency Towns and the Straits Settlement, the Officer disarming could only keep the arms if the person disarmed refused to pay a penalty of ten Rupees. That would

not be a sufficiently stringent provision in the cases contemplated by this Bill. He should, therefore, move that the Presidency Towns be put in this respect on the same footing as other places as regarded this temporary measure. The terms of his motion were as follows:—That the words,

"other than places in which Section XLVII of Act XIII of 1856 (entitled an Act for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca') is in force,"

be left out of the Section. These words had been inserted in Select Committee; and he must say that it had not occurred to him, at the time, that their effect would be to entitle a person disarmed in a Presidency Town to the redelivery of his arms on payment of ten Rupees.

The amendment was agreed to.

MR. PEACOCK next moved that the words

"unless by leave of the Magistrate or other Officer authorized by the Executive Government in that behalf, he shall, unless he shall produce some certificate that he has obtained such leave"

be left out, in order that the following might be substituted for them:—

"and shall not produce a certificate from a Magistrate or other Officer authorized by Government to grant licenses to go armed, that he has obtained such a license."

The amendment was only verbal, except in this, that it enabled any Officer authorized by the Government, other than Magistrates, to grant certificates. It would be useful to empower the Government to give such authority to Assistants to Magistrates, because it might be very inconvenient to a person at a distance from a Sudder Station wishing to go armed on a journey, to wait for a certificate from the Magistrate.

The amendment was agreed to.

After verbal amendments in subsequent parts—

MR. PEACOCK said, as the Section now stood, it would allow Magistrates to grant permission to carry any quantity of arms on a journey. They ought to be allowed to grant permission to carry only so much as might be necessary for the licensee's private use on his journey. That was the intention of the Section; and he should, therefore, move that the words "such arms as the Magistrate may consider reasonable for his private use" be inserted after the word "journey" in the 35th line of the Section.

Agreed to.

MR. PEACOCK then moved that the words "the name or address of the licensee" be inserted after the word "stating" in the 36th line of the Section.

The amendment was agreed to, and the Section then passed.

MR. PEACOCK said, he should move a new Section after Section V. The effect of Section V was merely to authorize the Magistrate or other Officer to disarm a person if, in his judgment, it was dangerous to the public peace to allow him to go armed. But there might be persons as to whom the Officer might be satisfied, not only that it was dangerous to the public peace that they should have arms, but that they were going armed with intent to use the arms for an illegal purpose themselves, or to make them over for the use of rebels. Such persons ought to be arrested without a warrant, and handed over to the Magistrate in order that they might be dealt with according to Law. He should, therefore, move that the following new Section be inserted after Section V:—

"If any person shall be found carrying or conveying arms or ammunition in such a manner, or under such circumstances, as to afford just grounds of suspicion that the same are being carried by such person with intent to use the same or that the same may be used for any unlawful purpose dangerous to the public peace, it shall be lawful for any of the public officers mentioned in Section V of this Act, or for any other person, to apprehend without warrant the person so carrying or conveying such arms or ammunition, and to detain such person in custody in order that he may be dealt with according to Law. If any person be apprehended by a person not being a Magistrate, Deputy Magistrate, or Assistant to a Magistrate, or Police Officer, he shall be delivered over as soon as possible to a Police Officer; and all persons apprehended by or delivered to a Police Officer under the provisions of this Act, shall be carried before a Magistrate or other Officer competent by Law to punish him for the offence or to commit him for trial."

THE CHIEF JUSTICE suggested that the words "sulphur or saltpetre" should be inserted after the word "ammunition" at the commencement of the Section.

MR. CURRIE said, the Section mov-

ed by the Honorable and learned Member on his right (Mr. Peacock), if he understood him aright, proposed to deal with a matter which was distinct from the transport of sulphur and saltpetre. He imagined the intention of the new Section, which came in connection with Section V, to be that, if a person going armed was deemed an enemy to the public peace, he might be arrested even if he was carrying only a reasonable quantity of arms. The transport of sulphur and saltpetre, it appeared to him, was quite unconnected with the subject of these Sections, and was sufficiently provided for in a subsequent part of the Bill. Section XV provided that "the Governor-General in Council may by order prohibit the transport of arms, ammunition, military stores, sulphur, and saltpetre, * * from one part of India to another, or the transport thereof in any particular direction;" and Section XVI provided confiscation and a fine not exceeding five hundred Rupees for the violation of such prohibition. It did seem to him that that was quite sufficient, and that the words proposed to be introduced by the Honorable and learned the Chief Justice would be out of place.

MR. PEACOCK said, he could not see the force of the Honorable Member's objection. In the previous Sections relating to arms and ammunition, it had not been thought necessary to include sulphur and saltpetre; but that was no reason why sulphur and saltpetre should be excluded from subsequent Sections also. The Honorable Member said the Bill, as it stood, provided sufficiently against the transport of sulphur and saltpetre. He (Mr. Peacock) took issue on that point. If a person was found carrying sulphur or saltpetre under circumstances which raised reasonable grounds of suspicion—such as the time, place, or manner of carrying—that he intended using it, or making it over to be used, for some improper purpose, it should be lawful for any one, whether a Police Officer or not, to stop him and take him before a Magistrate. Under the Bill, as it now stood, a person would be liable to be punished for having in his possession sulphur or saltpetre of which he had given no notice; but no one would have a right to stop him without a warrant if he saw him carrying sulphur or saltpetre under suspicious circumstances. He would have to go and apply to the Magistrate for a warrant; and by the time he could return with it, the offender would have escaped. The object was to stop such persons at once, in order that there might be no opportunity of escape.

MR. PEACOCK'S Section was then put, after the insertion of the words "military stores, sulphur, or saltpetre" after the word "ammunition" at the commencement.

MR. CURRIE said, he must repeat the objection he had taken before. He thought the provisions of the new Sections entirely out of place. The preceding Sections provided for notice being given of the possession of arms, the registration of arms, the seizure and detention of arms of which no notice had been given, and the disarming of persons going armed without leave. These followed in regular sequence. But the Section now proposed would be entirely out of place in connection with Section V. If it was inserted at all, it ought to be inserted later in the Bill—after the Sections relative to the illegal importation and transport of arms, ammunition, sulphur, and saltpetre.

MR. PEACOCK said, if the objection was merely to the Section being inserted after Section V, he would agree to insert it in any other part of the Bill which might be shown to be proper. He should not have the slightest objection to inserting it after the Sections relative to the transport of arms and ammunition, and he would, therefore, withdraw his motion for the present. He must mention, however, that the Section was very similar to a provision in an Act which had been passed at home for the repression of the Lancashire riots.

The motion was by leave withdrawn.

Sections VI, VIII, and X, were passed after verbal amendments.

Section XIV was passed after an amendment.

Section XVI was passed after a verbal amendment.

MR. PEACOCK moved that the new Section which he had withdrawn, be inserted after Section XVI.

MR. CURRIE said, he did not wish to renew his opposition to it, but it appeared to him to be unnecessary.

The Section was put, and carried.

Section XVII authorized the Government to prohibit the sale of sulphur without license, and to require all persons having sulphur in their possession to give notice thereof.

MR. PEACOCK said, he proposed to insert a new Section in a later part of the Bill for the purpose of authorizing the Government to require, if it should think fit, all persons who had ammunition or military stores in their possession, to give notice of them. The Bill at present provided such notice with respect to arms, but not with respect to ammunition. He did not think it necessary that the Act should be as stringent in requiring notice of possession of ammunition as in requiring notice of possession of arms; but if a person had in his possession a large quantity of ammunition, he ought to give notice to some public Officer, if Government considered notice necessary, leaving it to the Government to deal with the case as they might think proper. Section VII said if any person should "manufacture, or sell, or keep, or expose for sale percussion-caps, gun-powder, or other ammunition, without a license," he should be liable to a penalty not exceeding five hundred Rupees, and the ammunition should be forfeited. It would be rather unreasonable to require notice of the possession of sulphur because it might be used in the manufacture of gun-powder, and yet not to require notice of the possession of gun-powder. He proposed to omit from this Section those words which required notice to be given of the possession of sulphur, because he thought that it would be better to put sulphur on the same footing as ammunition, and should include it in the Section relating to ammunition which he proposed to introduce into a later part of the Bill.

The amendment was agreed to.

MR. PEACOCK said, the Section, as it now stood, provided a penalty for "neglecting to give such notice" (that is, the notice required by the words just struck out), but not for the sale of sulphur contrary to the orders of Government. He should move that the words "neglecting to give such notice" be omitted, in order that the words

"selling sulphur contrary to such order."

might be substituted for them, the Section would then be, in effect, only a prohibition against the sale of sulphur contrary to the orders of Government.

The amendment was agreed to, and the Section then passed.

Section XVIII provided that the Government might also seize all sulphur in the possession of any person without a license, and detain it for such time as they might think necessary for the public safety, unless the owner should consent to sell it to them at the fair market-price.

MR. PEACOCK said, if the Government should prohibit the sale of sulphur, there would be no market-price of sulphur. Under this Section, a person might in such a case, say to the Government—"I have a large quantity of sulphur; I cannot dispose of it in the market; you must buy it"—and he might purchase sulphur for the purpose of carrying on a trade with Government in sulphur. To obviate this, it ought to be made optional with the Government to enter into a contract for the purchase of sulphur or not, applying to sulphur the same rule in this respect as was provided with regard to arms. If the Government should require sulphur for any particular purpose, they might enter into a contract and purchase; but they ought not to be compelled to purchase. He, therefore, moved that the words "unless the owner shall consent to sell the same to Government at the fair market-price thereof" at the end of the Section, be omitted.

The amendment was agreed to, and the Section then carried.

Section XIX was passed after an amendment.

MR. PEACOCK moved that the following new Section be introduced after Section XX:—

"The Government may require all persons having in their possession ammunition, or other military stores, or sulphur, in any greater quantities than are considered reasonable for private use, to give notice thereof to the Magistrate or other Officer specified by Government; and any person who wilfully neglects to give such notice, shall be liable to imprisonment with or without hard labor for a term not exceeding two years, and shall also be liable to a fine not exceeding five thousand Rupees; and all ammunition, military stores, or sulphur in the possession of such person, or upon his premises, shall be confiscated."

Agreed to.

Section XXIII was passed after an amendment.

Section XXVI was the Interpretation Clause.

MR. PEACOCK said, this Section had been amended at the last Meeting so as to prevent Commissioners of Police and others not vested with the full powers of a Magistrate, from exercising any judicial powers under the Act. It now stood thus:—

"The word 'Magistrate' shall include any person exercising the full powers of a Magistrate. All powers of conviction, and confiscation upon conviction, given by this Act to a Magistrate, shall, within the Presidency Towns and in the Straits Settlement, be exercised by the Police Magistrate."

There were some Sections in the Bill which only used the words "Magistrate," and which conferred powers, not of a judicial, but of an executive character. In the Presidency Towns and the Straits Settlement these ought to be exercised by the Commissioners of Police; and, therefore, he should move amendments which would make the Section run thus:—

"The word 'Magistrate' shall include any person exercising the full powers of a Magistrate. All powers of conviction, and confiscation upon conviction, given by this Act to a Magistrate, shall be exercised by the Police Magistrate. And all other powers given by this Act to a Magistrate may be exercised by the Commissioner of Police; and all notices hereby required to be given to a Magistrate shall, in any such Presidency Town, or in the Straits Settlement, be given to the Commissioner of Police."

MR. CURRIE asked if the Honorable and learned Member had looked carefully through the Bill with reference to this point. His impression was that, wherever the Bill authorized the performance of an executive act, it expressly provided that it might be performed by "the Magistrate or the Commissioner of Police." Amendments had been introduced in Committee for the purpose of making it clear that the Officer intended was the Commissioner of Police in the Presidency Towns.

MR. PEACOCK said, it was not so in every case. Section V, for instance, did not authorize a Commissioner of Police to disarm persons going armed without leave.

MR. CURRIE said, if the words "or, in Presidency Towns, by the Commissioner of Police" did not occur in this Section as it had been amended in Committee to-day, but did occur in others, the better course would be to insert them in it.

MR. PEACOCK said, there was another Section which did not vest an executive power in Commissioners of Police in Presidency Towns. He alluded to the Section which authorized the stopping of persons carrying arms with intent to use them for an improper purpose. It appeared to him that there could be no harm in inserting the amendments he proposed in Section XXVI. All that was wanted was to guard against Commissioners of Police in the Presidency Towns exercising judicial powers, and Police Magistrates in the Presidency Towns exercising executive powers. If the Honorable Member for Bengal would guarantee that the Bill as it stood would prevent this, he (Mr. Peacock) would withdraw his motion.

MR. CURRIE said, he was not prepared to say that the Bill was consistent in itself throughout. It might be so; but so many alterations had been introduced into it in Committee that he certainly was not disposed to give the required guarantee. He thought it could hardly be read a third time until Honorable Members had had time to examine the several alterations.

MR. PEACOCK said, the Honorable the Vice-President, who was in charge of the Bill, was in a position to move the third reading of the Bill after it should be reported. He (Mr. Peacock) proposed to insert in Section XXVI an amendment which he conceived to be necessary in order to set the Bill right. The Honorable Member for Bengal said that the Bill was right as it stood. If he would not guarantee that it was right as it stood, he (Mr. Peacock) could not agree to withdraw his amendment. The amendment was consistent with the intentions of the Council, and it could not do any harm.

THE VICE-PRESIDENT said, he should have no objection to postpone the third reading of the Bill.

THE CHIEF JUSTICE said, if the Bill should undergo revision in this particular, he thought it would be better to omit all mention of Commissioners of Police in the Sections conferring executive powers, and to insert a new

Section at the end providing that, in the Presidency Towns and the Straits Settlement, those powers might be exercised by Commissioners of Police.

MR. PEACOCK'S amendments were severally put, and carried, and the Section was then passed.

MR. CURRIE moved that the following new Section be introduced after Section XXVII:—

"Whenever, in any Presidency or place, the immediate control and superintendence of the Police is vested in any person other than the Magistrate or such Commissioner of Police as aforesaid, all or any of the acts which, by Sections, I, III, IV, V, and XXI of this Act, the Magistrate or Commissioner of Police is authorized or required to perform, may be performed by such person, if the Executive Government shall so direct."

The Section was agreed to.

MR. PEACOCK moved that the following new Section be introduced after Section XXIV:—

"Whoever assaults or resists, or aids or assists any person in assaulting or resisting any person in the execution of any power vested in him by this Act, shall be liable, on conviction before a Magistrate, to a fine not exceeding two hundred Rupees, or to imprisonment with or without hard labor for any term not exceeding six calendar months."

The Section was agreed to.

MR. PEACOCK moved that after the above Section the following new Section be introduced:—

"No suit, action, or other proceeding shall be commenced or prosecuted against any person for any thing done in pursuance of this Act without giving to such person a month's previous notice in writing of the intended action, and of the cause thereof; nor after tender of sufficient amends; nor after the expiration of three months from the accrual of the cause of action or other proceeding."

The Section was agreed to.

Sections XXIX and XXXI were passed, after verbal amendments.

Sections I, III, IV, VIII, X, XXI, and XXIV were re-committed, and passed after verbal amendments rendered necessary by the amendment of Section XXVI.

The Council having resumed its sitting, the Bill was reported.

LAND CUSTOMS (BOMBAY).

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "to make better provision for the collection of Land Customs on certain Foreign Frontiers of the Presidency of Bombay;" and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed. In doing so, he said he should mention that, since the Bill had been reported upon by the Select Committee, he had communicated with the Authorities at Bombay, and had been informed by the Collector of Customs there that, after a careful perusal, the Authorities were of opinion that the Bill would do very well in its present shape.

The Honorable Member's motion was agreed to.

Section I was passed as it stood.

Section II was passed after a verbal amendment.

Sections III and IV were passed as they stood.

Section V was passed after the insertion of a Proviso requiring that no new office under the Act should be created without the previous consent of the Governor-General of India in Council.

Sections VI to XVII were passed as they stood.

MR. LEGEYT moved that the following new Section be inserted after Section XVII:—

"Whoever intentionally obstructs any Officer in the exercise of any powers given by this Act to such Officer, shall be liable, on conviction before a Magistrate, to imprisonment for any term not exceeding six months, or a fine not exceeding one thousand Rupees, or both."

Agreed to.

MR LEGEYT moved that the following new Section (which was Section XI of the original Bill slightly amended) be inserted after the above:—

"Whoever offers a bribe to any Officer appointed under this Act in order to induce such Officer to act in a manner inconsistent with his duty, shall be liable for every such offence, on conviction before a Magistrate, to a fine not exceeding one thousand Rupees, or to imprisonment for any term not exceeding six months, or both."

Agreed to.

Section XVIII was passed as it stood.

Section XIX was passed after an amendment.

Section XX, and the Preamble and Title, were passed as they stood.

The Council having resumed its sitting, the Bill was reported.

The Chief Justice

STRAITS' FERRIES.

MR. CURRIE moved that General Low be requested to take the Bill "for regulating Ferries in the Settlement of Prince of Wales' Island, Singapore, and Malacca" to the Governor-General for his assent.

Agreed to.

MADRAS UNIVERSITY.

MR. LEGEYT moved that General Low be requested to take the Bill "to establish and incorporate an University at Madras" to the Governor-General for his assent.

Agreed to.

NOTICES OF MOTIONS.

THE VICE-PRESIDENT gave notice that he would, on Saturday the 5th of September, move the third reading of the Bill "relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same."

MR. LEGEYT gave notice that he would on the same day move the third reading of the Bill "to make better provision for the collection of Land Customs on certain Foreign Frontiers of the Presidency of Bombay."

PORT-DUES (BOMBAY, TUNKARIA, AND BROACH).

MR. LEGEYT moved that a communication received by him from the Government of Bombay be laid on the table and referred to the Select Committees on the Bill "for the levy of Port-dues and fees in the Port of Bombay" and the Bill "for the levy of Port-dues in the Ports of Tunkaria and Broach."

Agreed to.

The Council adjourned.

Saturday, September 5, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice, His Excellency the Commander-in-Chief, Hon. Major General J. Low, Hon. B. Peacock, P. W. LeGeyt, Esq., E. Currie, Esq., and Hon. Sir A. W. Buller.

STRAITS' FERRIES.

The following Message from the Governor-General was brought by General Low, and read:—

MESSAGE No. 113.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 29th August 1857, entitled "A Bill for regulating Ferries in the Settlement of Prince of Wales' Island, Singapore, and Malacca."

By order of the Right Honorable the Governor-General.

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 5th Sept. 1857.

MADRAS UNIVERSITY.

The following Message from the Governor-General was also brought by General Low, and read:—

MESSAGE No. 114.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 29th August 1857, entitled "A Bill to establish and incorporate an University at Madras."

By order of the Right Honorable the Governor-General.

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 5th Sept. 1857.

CIVIL PROCEDURE (BOMBAY).

THE CLERK reported that he had received from the Officiating Under-Secretary to the Government of India in the Home Department a copy of a communication from the Government of Bombay on the working of Act XVI of 1853 ("for amending the Law of Special Appeals"), forwarded for consideration in connection with the new Codes of Civil Procedure.

MR. LEGEYT moved that the above communication be referred to the Select Committee on the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bombay."

Agreed to.

MINORS (MADRAS).

MR. CURRIE moved the first reading of a Bill "to extend the provisions of Act XXI of 1855 in the Presidency of Fort St. George to Minors not subject to the superintendence of the Court of Wards." He said, on the 22nd of last month, a communication from the Madras Government was presented to the Council, and had since been printed by order of the Council. That communication, which was addressed to the Clerk of the Council, was to the following effect:—

SIR;

I am directed by the Right Honorable the Governor in Council to forward the accompanying copy of a letter from the Register to the Court of Sudder Udalut dated 10th July 1857, about conferring on the Judges of that Court the powers vested in the Court of Wards by Act XXI of 1855.

2. Regulation V of 1804 Section XX, extended by Regulation X of 1831 Section III, requires Zillah Judges to nominate guardians, subject to the confirmation or rejection of the Court of Sudder Udalut, for the management of certain estates, real and personal, belonging to heirs incapacitated from regulating their affairs by minority, sex, or natural infirmity; and Section XXI Clause 9 of the former of these enactments enjoins on such guardians the appointment, subject to the approval of the Sudder Udalut, of a teacher for the education of his Ward in a manner suitable to his rank and condition in life. But in circumstances similar to those referred to by the Sudder Udalut in the letter herewith transmitted, where it is desirable to remove a Minor to a School or College at some distance from his place of residence, the Sudder Udalut has not the power by Law to direct his being sent thither for instruction.

3. The Court of Wards have this power conferred on them by Act XXI of 1855; and the Right Honorable the Governor in Council agrees with the Court of Sudder Udalut that they should be in like manner vested with it.

4. I am therefore directed to request that you will be so good as to adopt measures for bringing before the Legislative Council of India the propriety of making the provisions of Act XXI of 1855 applicable to the Court of Sudder Udalut in respect of the Minors placed under their control by Regulation V of 1804.

I have the honor to be,
Sir,
Your most obedient Servant,
E. MALTBY,
Acting Chief Secretary.

FORT ST. GEORGE,
22nd July 1857.

In the absence of the Honorable Member for Madras, he had taken it upon himself to prepare a Bill in accordance with the request contained in this letter. The effect of the Bill, if it should pass into Law, would be simply to give to the Zillah Courts and the Sudder Adawlut, in respect of Minors for whom guardians were appointed by them, the same powers as by Act XXI of 1855 were given to Collectors of Revenue and to the Court of Wards with respect to Minors whose property was under their management. If it was for the interest of a Minor under the Court of Wards that the Court of Wards should have the power of providing effectually for his education, it must be equally for the interest of a Minor under the Civil Court that that Court should have the same power in regard to him.

Many months ago, he had introduced into the Council a Bill for Bengal containing provisions similar to those now proposed for Madras. The scope of the Bengal Bill was, however, much wider. It provided for the effective supervision by the Civil Court of the property of the Minor, as well as for the care of his person. But the Law of Bengal and the Law of Madras were not altogether the same on this point; and he was not sure that what had seemed to be necessary for Bengal was required for Madras. He had therefore thought it expedient to limit this Bill to the single object indicated in the letter of the Madras Government.

The Bill was read a first time.

PORT-DUES (CUTTACK).

MR. CURRIE moved the second reading of the Bill "to provide for the levy of Port-dues in certain Ports in the Province of Cuttack."

The motion was carried, and the Bill read a second time.

ARMS AND AMMUNITION.

On the Order of the Day being read for the third reading of the Bill "relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same"—

MR. PEACOCK moved that the Bill be re-recommitted for the purpose of considering proposed amendments.

Agreed to.

After a verbal amendment in Section V—

THE CHIEF JUSTICE said, there seemed to be an erroneous impression abroad as to the effect of this Section. He hoped that, when the Act came into operation, the Executive Government would take care to explain to the Officers who would have to give effect to it, what these provisions really meant. To him it appeared perfectly clear that, under them, no person was to be liable to be disarmed, whether he had or had not a pass, unless there were reasonable grounds for supposing that his going armed was dangerous to the public peace. He (the Chief Justice) made these remarks because he had seen comments in the newspapers and elsewhere founded on the hypothesis that every person who travelled without the certificate or license provided for by the latter part of this Section, would be disarmed whether he were or were not likely to be a disturber of the public peace. The certificate (if produced) would, no doubt, control the discretion given to the Magistrates or other Officers mentioned; but all those Officers ought to understand that, in the absence of a certificate, this discretion, like every other discretionary authority, was to be reasonably exercised; and that no person should be disarmed, unless there were some grounds for the conclusion that it was dangerous to the public peace to allow him to go armed. He (the Chief Justice) thought that, if the provisions of this Section were carried into effect rationally, no European traveller carrying weapons for his own defence, whether with or without a license, would be deprived of those weapons—unless, indeed, he misconducted himself in such a way as to show that he could not safely be trusted with them.

MR. PEACOCK said, if the Bill was so worded as to render the construction doubtful, it ought to be amended; but he did not think that any person who had read the Bill carefully, could put upon it the construction suggested. It was only when, in the judgment of the Magistrate or other Officer mentioned in the Section, it would be dangerous to the public peace to allow a person to go armed, that such person could be disarmed under the provisions of this Section. If he should produce a license from a Magistrate to carry arms, or a certificate that he had been exempted by Government from the provisions of the Bill, the Magistrate or other Officer named in the Section would have no discretion to act under this Section, but would be bound to let him proceed with his arms, unless he should be carrying them under such circumstances as to afford just grounds of suspicion that he intended the arms to be used for an unlawful purpose dangerous to the public peace.

THE CHIEF JUSTICE said, he entirely acquitted many of the critics of this Bill of having read it. For instance, he had seen a complaint that Europeans were to be compelled by it to take out a license to possess arms; whereas the Council well knew that the provisions to that effect had been struck out of the Bill some weeks ago. His object in provoking this discussion was, not to move any amendment on the Section as it stood, but to remove a misconception which appeared to exist in some quarters, and which might extend to those whose duty it would be to put the Act in force.

The Section, as amended on Mr. Peacock's motion, was then passed.

Sections IX, XVI, XVIII, and XXII were passed after verbal amendments.

MR. LEGEYT said, he wished to call the attention of the Council to Section XXXI. As it now stood, it provided that "the word 'Magistrate' shall include any Officer exercising the full powers of a Magistrate."

By this, he supposed, that all the powers given by this Bill would be exercised by every person who was empowered by any Regulation or Act to exercise the full powers of a Magistrate. In the last number of the Bombay Government Gazette he saw the following announcement:—

"Under the provisions of Act XIV of 1835, Lieut. T. Thatcher, Assistant Superintendent of Police at Ahmednuggur, is appointed an Assistant Magistrate in that Zillah; and, under Section IV of Act IV of 1851, is also vested with the full powers of a Magistrate, with the exception of the power of review."

He also found, on reference to the Government Gazette of this Presidency, that, on the 5th, the 27th, and subsequent dates of last month, Assistants to Magistrates were appointed to Hazareebaugh, Behar, and other districts, with the full powers of a Magistrate. He would ask if it was intended—he could hardly think that it was—to confer on

all these Officers the powers given by this Bill? From the discussions that had taken place in the Council, he thought it was intended that the word "Magistrate" should mean the Zillah Magistrate; and that many of the powers given by the Act to Magistrates should be wholly limited to those Officers. But, as Section XXXI now stood, Officers like those to whose appointments he had just referred, and doubtless all Superintendents of Police, would have all the powers which this Bill expressly directed should be exercised by Magistrates. He did not see the use (after the new Section which was introduced into the Bill on Saturday last, and which now stood as Section XXXII) of retaining any interpretation of the term "Magistrate," and he desired to move as an amendment that

"The word 'Magistrate' shall include any person exercising the full powers of a Magistrate; and,"

in the beginning of the Section, be left out. The Magistrate might then be understood to mean the Zillah Magistrate.

THE CHIEF JUSTICE said, he could not support the amendment. He presumed that, if extraordinary appointments of persons with the powers of Magistrates were made in particular districts, they were made because the necessities of the country required them, and the ordinary Magistrates were not found sufficient to keep the peace in those districts. In making these appointments, it would be in the discretion of the Executive to limit the powers of the nominees; and, if they thought fit, they might withhold from them the powers to be given by this Act. But it appeared to him most desirable that such Officers should have and exercise the powers given by this Act in districts like that of Hazareebaugh, where probably there would be no other person on the spot, or within a reasonable distance, who could exercise them.

THE CHAIRMAN said, that would be the case. In many of the non-Regulation Provinces there was no such Officer as a Magistrate, and there might be no one to exercise the powers to be given by this Act but persons specially appointed with the full powers of a Magistrate.

MR. LEGEYT said, the persons appointed Assistant Superintendents of Police, would probably be young Officers; and he could not think that the Council intended that these young Officers should be invested with at least the judicial powers given by this Act.

THE CHIEF JUSTICE said, these same young Officers were *ex concessis* appointed to exercise the full powers of a Magistrate, and, if so appointed, they had, under the general Law, the power of sentencing persons to imprisonment for two years. If they were fit to be entrusted with such a power, they might surely be entrusted with the powers given by this Bill.

MR. CURRIE said, with respect to Bengal, he believed that the words "shall include any person exercising the full powers of a Magistrate" had been introduced for the purpose of including not only such appointments in the non-Regulation Provinces as those alluded to by the Honorable the Vice-President, but also the very appointments to which the Honorable Member for Bombay had called attention. The Officers so appointed were placed in charge of subdivisions, and when such Officers were vested with the full powers of a Magistrate, it seemed to him quite right, and indeed necessary for the efficient working of the Bill, that they should exercise the powers given by the Bill to Magistrates. With respect to Superintendents of Police at Bombay, if the Bombay Government considered them fit persons to be entrusted with the full powers of a Magistrate, he could not see why they should not be equally entrusted with the powers given by this Bill.

MR. PEACOCK said he agreed with what had fallen from the Honorable Member for Bengal and the Honorable and learned Chief Justice. Section XXIII provided that any "Magistrate" might, on reasonable cause for suspicion, enter and search for arms, ammunition, or sulphur liable to confiscation; and Section XXXI said that the word "Magistrate" should include any person exercising the full powers of a Magistrate. Surely, an Officer of the experience of an Assistant Superintendent of Police, and whom the Government had thought fit to invest with the full powers of a Magistrate, might safely be entrusted with such

powers as that of entry and search provided by this Bill. If an Officer was competent to exercise the full powers of a Magistrate under the ordinary Acts, which, in many cases, gave him the power of sentencing to imprisonment for two years, he (Mr. Peacock) could not see why he might not be invested with the powers given to a Magistrate by this Bill.

MR. LEGEYT, with the leave of the Council, withdrew his motion.

Section XXXII provided as follows:—

"Whenever, in any Presidency or place, the immediate control and superintendence of the Police is vested in any person other than the Magistrate or such Commissioner of Police as aforesaid, all or any of the Acts which, by Sections I, III, IV, V, and XXIII of this Act, the Magistrate or Commissioner of Police is authorized or required to perform, may be performed by such person, if the Executive Government shall so direct."

It was passed after amendments which made it run thus:—

"Whenever, in any Presidency or place, the immediate control and superintendence of the Police is vested in any person other than the Magistrate or such Commissioner of Police as aforesaid, the Executive Government may order that all or any of the powers given by this Act to a Magistrate, other than powers of conviction and confiscation upon conviction, shall be exercised by such person; and that all notices hereby required to be given to a Magistrate, shall be given to such person."

Section XXXVI was passed after a verbal amendment.

The Council having resumed its sitting, the Bill was reported.

THE VICE-PRESIDENT moved that the Bill be now read a third time and passed.

The Motion was carried, and the Bill read a third time.

LAND CUSTOMS (BOMBAY).

On the Order of the Day being read for the third reading of the Bill "to make better provision for the collection of Land Customs on certain Foreign Frontiers of the Presidency of Bombay"—

MR. LEGEYT moved that the Bill be recommitted, for the purpose of considering proposed amendments.

Agreed to.

Section XVI was passed, after verbal amendments.

The Council having resumed its sitting, the Bill was reported.

MR. LEGEYT moved that the Bill be now read a third time and passed.

The Motion was carried, and the Bill read a third time.

ARMS AND AMMUNITION.

THE VICE-PRESIDENT moved that General Low be requested to take the Bill "relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same" to the Governor-General for his assent.

Agreed to.

LAND CUSTOMS (BOMBAY).

MR. LEGEYT moved that General Low be requested to take the Bill "to make better provision for the collection of Land Customs on certain Foreign Frontiers of the Presidency of Bombay" to the Governor-General for his assent.

Agreed to.

The Council adjourned.

Saturday, September 12, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President.*

Hon. the Chief Justice,	P. W. LeGeyt, Esq.,
Hon. Major General J. Low,	and
Hon. B. Peacock,	E. Currie, Esq.

The Members assembled at the Meeting did not form the Quorum required by Law for a Meeting of the Council for the purpose of making Laws.

The following were read:—

ARMS AND AMMUNITION.

MESSAGE No. 115.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 5th September 1857, entitled "A Bill relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same."

By order of the Right Honorable the Governor-General.

CECIL BEADON,
Secy. to the Govt. of India.

Fort William,
The 11th Sept. 1857.

LAND CUSTOMS (BOMBAY).

MESSAGE No. 116.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 5th September 1857, entitled "A Bill to make better provision for the collection of Land Customs on certain Foreign Frontiers of the Presidency of Bombay."

By order of the Right Honorable the Governor-General.

CECIL BEADON,
Secy. to the Govt. of India.

Fort William,
The 11th Sept. 1857.

Saturday, September 19, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice, Hon. Major General J. Low, Hon. B. Peacock, P. W. LeGeyt, Esq., E. Currie, Esq., and Hon. Sir A. W. Buller.

POST OFFICE.

THE CLERK reported to the Council that he had received a communication from the Secretary to the Government of India in the Home Department forwarding copies of two communications from the Director General of the Post Office of India, with a view to the passing of an Act to render punishable the offence of demanding and receiving more than the authorized postage due on letters not prepaid.

PORT-DUES (CALCUTTA).

MR. CURRIE presented the Report of the Select Committee on the Bill "for the levy of Port-dues and fees in the Port of Calcutta."

PORT-DUES (MOULMEIN, &c.)

MR. CURRIE also presented the Report of the Select Committee on the Bill "for the levy of Port-dues in the Ports of Moulmein, Rangoon, Dalhousie, Akyab, and Chittagong."

MINORS (MADRAS).

MR. CURRIE moved the second reading of the Bill "to extend the provisions of Act XXI of 1855 in the Presidency of Fort St. George to Minors not subject to the superintendence of the Court of Wards."

The motion was carried, and the Bill read a second time.

PORT-DUES (CUTTACK).

MR. CURRIE moved that the Bill "for the levy of Port-dues in certain Ports in the Province of Cuttack" be referred to a Select Committee consisting of the Chief Justice, Mr. LeGeyt, and the Mover.

Agreed to.

PORT-DUES (BOMBAY).

MR. LEGEYT moved that the Chief Justice be added to the Select Committee on the Bill "for the levy of Port-dues and fees in the Port of Bombay."

Agreed to.

PORT-DUES (KURRACHEE).

MR. LEGEYT moved that the Chief Justice be added to the Select Committee on the Bill "for the levy of Port-dues and fees in the Port of Kurrachee."

Agreed to.

PORT-DUES (TUNKARIA AND BROACH).

MR. LEGEYT moved that the Chief Justice be added to the Select Committee on the Bill "for the levy of Port-dues in the Ports of Tunkaria and Broach."

Agreed to.

CATTLE-STEALING (PENAL CODE).

MR. CURRIE moved that a communication received by him from the Bengal Government concerning papers formerly printed relative to the punishment of persons conniving at Cattle-stealing in order to obtain a reward for the restoration of the Cattle, be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

The Council adjourned.

Saturday, September 26, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.,
Hon. Major General J. Low,	E. Currie, Esq, and
Hon. B. Peacock,	Hon. Sir A. W. Buller.

POLICE AND CONSERVANCY (SUBURBS OF CALCUTTA, AND HOWRAH).

THE CLERK reported to the Council that he had received a communication from the Officiating Under-Secretary to the Government of India in the Home Department forwarding a copy of a Despatch from the Honorable the Court of Directors approving of the course adopted by the Governor-General in withholding his assent to the Bill "to make better provision for the order and good government of the Suburbs of Calcutta and of the Station of Howrah."

PORT-DUES (BOMBAY).

MR. LEGEYT presented the Report of the Select Committee on the Bill "for the levy of Port-dues and fees in the Port of Bombay."

PORT-DUES (TUNKARIA AND BROACH).

MR LEGEYT also presented the Report of the Select Committee on the Bill "for the levy of Port-dues in the Ports of Tunkaria and Broach."

PORT-DUES (CALCUTTA).

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill "for the levy of Port-dues and fees in the Port of Calcutta;" and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

Agreed to.

Sections I and II were passed as they stood.

Section III was passed after a verbal amendment.

Sections IV, V, and VI were passed as they stood.

Section VII was passed with the insertion of the words and figures "the first day of January 1858" as the date of the commencement of the Act.

Section VIII and the Preamble and Title were passed as they stood.

The Council resumed its sitting.

PORT-DUES (MOULMEIN, &c.)

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill "for the levy of Port-dues in the Ports of Moulmein, Rangoon, Dalhousie, Akyab, and Chittagong;" and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

Agreed to.

The Bill was passed after the insertion in Section V of the words and figures "the first day of January 1858" as the date of the commencement of the Act.

The Council having resumed its sitting, both the above Bills were reported by the Chairman.

MR. CURRIE moved that the Bill "for the levy of Port-dues in the Ports of Moulmein, Rangoon, Kyouk Phyoo, Akyab, and Chittagong," as settled in Committee of the whole Council, be published in the Gazette for general information. By the alterations which had been made in it since the second reading, the rates leviable at some of the Ports mentioned in the Schedule had been increased; and it was, therefore, proper that it should be republished as it now stood, before it was passed.

Agreed to.

The Council adjourned.

Saturday, October 3, 1857.

PRESENT:

The Hon'ble J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.
Hon. Major General J. Low,	E. Currie, Esq. and
Hon. B. Peacock,	Hon. Sir A. W. Buller.

PORT-DUES (BOMBAY).

THE CLERK reported that he had received by transfer from the Secretary to the Government of India in the Home Department two communications from the Government of Bombay regarding the levy of Port-dues under that Presidency.

MR. LEGEYT said that these communications would be printed as annexures to a Bill which he was about to introduce into the Council to-day; and it was, therefore, unnecessary to make a separate motion regarding them.

PORT-DUES (GULF OF CAMBAY).

MR. LEGEYT moved the first reading of a Bill "for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay." Altogether, there were ten Ports included in the Bill. He had placed them all in one Bill, and inserted in a Schedule the dues which he proposed should be levied at each. These dues had been fixed on a principle similar to that which had been adopted in the construction of the Schedule in the Bills relating to the Ports of Tunkaria and Broach, and provided for the estimated expenses of projected improvements. The annexed papers, which were voluminous, would be printed with the Bill. They showed the circumstances of each Port, and the improvements which were proposed therein by the Bombay Government. As these papers would be placed before the Council with the Bill, he would not take up their time with any further observations.

The Bill was read a first time.

MINORS (MADRAS).

MR. CURRIE moved that the Bill "to extend the provisions of Act XXI of 1855, in the Presidency of Fort St. George, to Minors not subject to the superintendence of the Court of Wards" be referred to a Select Committee consisting of the Chief Justice, Mr. LeGeyt, and the Mover.

Agreed to.

NOTICES OF MOTIONS.

MR. LEGEYT gave notice that he would, on Saturday next, move for a Committee of the whole Council on the Bill "for the levy of Port-dues and fees in the Port of Bombay."

Also for a Committee of the whole Council on the Bill "for the levy of Port-dues in the Ports of Tunkaria and Broach."

MR. CURRIE gave notice that he would, on Saturday next, move the first reading of a Bill to amend the Law relating to the recovery of Rent in the Presidency of Fort William in Bengal.

The Council adjourned.

Saturday, October 10, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.,
Hon. Major General J. Low,	E. Currie, Esq., and
Hon. B. Peacock,	Hon. Sir A. W. Buller.

RECOVERY OF RENTS (BENGAL).

MR. CURRIE moved the first reading of a Bill "to amend the Law relating to the recovery of Rent in the Presidency of Fort William in Bengal." The necessity, he said, for the revision and consolidation of the distraint and summary suit Laws which comprised the Law for the recovery of rents, had been long and generally acknowledged. The basis of the existing Law was to be found in the Regulations of 1793 and 1799; but, in the course of sixty years, very considerable alterations, additions, modifications, and supersessions had taken place; so that it was difficult for any person not conversant with the subject, to ascertain what the Law in force really was.

Originally, the summary cognizance of claims to arrears of rent and of complaints of illegal distraint was vested in the Civil Courts. About twenty-six years ago, it was transferred to the Collectors. But no rules for conducting the summary enquiry either before the Civil Courts or before the Collectors had ever been laid down. Sensible of the imperfect and confused state of the Law, the Board of Revenue had undertaken the revision and consolidation of the Regulations and Acts bearing on the subject; and two comprehensive drafts had been prepared, one by Mr. Ricketts, and the other by Mr. Stainforth. Neither of those drafts, however, had been adopted by the Board of Revenue. He had carefully considered both, and found them to be, for the most part, compendiums of the existing Law, the variations from it being principally in matters of detail, although the draft by Mr. Stainforth especially contained several important

modifications of the practice with respect to distraint. It was thought, however, that something more than this was requisite—that, in furnishing landholders with powers to compel the payment of rents, on which their ability to pay the Government revenue depended, sufficient regard had not been had to the protection of tenants from the abuse of those powers. The consequence of this omission had been a large amount of oppression inflicted by the more wealthy and powerful, upon the poorer classes.

Several remedies had been suggested for this evil. Amongst them, the giving of enlarged powers to Collectors for the summary adjudication of all cases of complaint in connection with demands of rent preferred by tenants and cultivators. There was a Law—Section XX Regulation VII of 1822—by which such powers might be specially conferred on particular Collectors. In the North Western Provinces, he believed they had been given, generally, to all Collectors; but in the Provinces under the Bengal Government, this had not been the case. Such power had been given to Collectors in these Provinces with respect to only one particular class of cases, and that had been given only within the last year or two. In the Code of Civil Procedure which had been framed by Messrs. Mills and Harrington, it had been recommended that Collectors generally should have the power of adjudicating all cases of the kind mentioned in Section XX Regulation VII of 1822, and that this jurisdiction should be exercised by them in accordance with the procedure proposed for the Small Cause Courts. In this general principle, he entirely concurred; and he had adopted it, accordingly, in this Bill.

It had been a question whether this jurisdiction might not more appropriately be given to Moonsiffs, especially on the ground that the Courts of the Moonsiffs had a local jurisdiction of limited extent. He thought it absolutely necessary for the efficient working of any measure of relief designed for the poorer classes that the means of redress should be brought near to their doors; and, were the only Revenue Court in a district now, as formerly, the office of the Collector at the Sudder Station, he should have thought the argument in favor of giving the jurisdiction in question to Moonsiffs very strong indeed. But the Collectorates in the Lower Provinces had, within the last few years, been very generally broken up into sub-divisions, and the constitution of new sub-divisions was still in progress; so that, in a few years, it might be hoped, the number of Deputy Collectors located in the interior would hardly be less than the number of Moonsiffs.

With the permission of the Council, he would read the remarks made by Messrs. Mills and Harrington on the subject:—

"We are of opinion that every Deputy Magistrate and Deputy Collector located in the Mofussil should be specially empowered to try summary suits. To the ryot who has been illegally ejected from his lands, or who has paid an unjust demand to avoid the sale of his property, this means of obtaining prompt redress will be an inestimable advantage; to the landlord desirous only that justice should be done between him and his ryot, it cannot prove otherwise than beneficial: and there can be no doubt that it will greatly conduce to the general good government of the district.

"It has been recommended by many Officers that the administration of the Law relating to summary suits for arrears or exaction of rent, or on account of illegal distraint and ousters from holdings, should be transferred from the Collectors to the Moonsiffs. The vicinity of the Moonsiff's Court to the residence of the cultivator would, as already observed, be a great advantage to the latter; but we think that it is desirable for many reasons to employ the Officers of the Revenue Department in at least the primary administration of the Law.

"The Collector is obviously the most appropriate instrument for the purpose. He is best acquainted with the fiscal state of the district, with the tenures prevailing in it, and with the character of the landlords; and he is the person most deeply interested in promoting this branch of the administration of Civil Justice. Questions between the landlord and the Government respecting the collection and assessment of the Public Revenue may properly be subjected to the cognizance of the established Courts of Judicature, as the Collector may be supposed to be interested in the result; but this is not the case in disputes between the landlord and tenant.

"So far from thinking it advisable to make such a transfer, we have considered whether the cognizance of all controversies between landlord and tenant might not advantageously be left altogether to the Revenue Officers without any appeal to the Civil Court, as is done in the Punjab; but, adverting to the present organization of the Civil Service, and to the uncovenanted agency now available, it would not, we think, be possible to carry out this scheme."

In these views, he (Mr. Currie) generally concurred. He thought that such cases as complaints of non-delivery of Pottahs, and indeed almost all cases which could arise between landlord and tenant, were best left to the primary cognizance of the Revenue Officers.

But in enlarging the jurisdiction of the Collectors for the trial of these cases, he had thought it necessary to re-enact, in a clear and distinct form, those provisions of the existing Law relative to the respective rights of landlord and tenant with which they would principally have to deal in the discharge of this duty.

The Bill, therefore, commenced with declaring that all ryots of every grade were entitled to receive Pottahs from the landholder declaring the amounts of rent payable by them, and also to have that rent adjusted according to certain fixed rules.

It also declared that all resident ryots or cultivators had a right of occupancy in the lands held or cultivated by them, so long as they paid the rents legally demandable from them.

These Sections contained nothing more than what had been the Law since the time of the Permanent Settlement; but, under that Law, the only remedy open to the ryot was by a regular suit in the Civil Court; and to refer a poor cultivator to a regular suit, against his landlord, under the present practice of the Courts, was almost tantamount to refusing him any remedy at all.

As the ryot was to have the right of demanding a Pottah, it was but just that the landholder should have the right of demanding a *Kubooleeut*, or written engagement for the payment of his rent by the tenant. By the present Law, a condition to the exercise of the powers of distraint or summary suit was that the landlord should have tendered Pottahs to his ryots; and this tender he might make by affixing a general notification in his Cutcherry intimating that the Pottahs were ready for delivery. This Law, which was intended for the protection of the Ryot, he (Mr. Currie) believed had, in practice, been altogether a dead letter. He had provided that, when the landholder tendered a Pottah to a ryot, and the ryot refused to receive it, he might sue him for a *kubooleeut*, and that the possession of a *kubooleeut*, or of a decree adjudging the delivery of one, should be necessary to authorize a landlord to exercise the right of distraint.

The Bill further provided penalties for exactions in excess of rent payable, and withholding receipts for rent paid —and also for extortion of rent by imprisonment or other duress.

It also took away the power now possessed by landholders of compelling the attendance of their ryots for adjusting rents, or for any other purpose. This power had been very generally complained of as being used as a means of oppression; and it seemed to him to be inconsistent with the general principles of our administration.

Then followed rules according to which the landholder was to proceed when he wished to raise his rents, and then a provision allowing ryots to resign their lands when unable or unwilling to hold them any longer. Many Bengal Officers had urged that a provision like this was very much required. From the want of it, an unfortunate ryot might be literally bound to the soil, if it should be the interest of the landholder so to bind him.

These were the principal provisions of the first part of the Bill.

There were rules for the ejectment of ryots and the cancelment of leases for arrears of rent, taken from the existing Law; but he had made them subject to the proviso that there should be no such ejectment or cancelment otherwise than in execution of a decree or order under the provisions of the Act.

The Bill gave to Revenue Officers exclusively the primary cognizance of all cases of the nature he had described.

It also gave them power to reinstate tenants illegally ousted, and to render assistance to landholders to eject tenants or agents whose tenancies or agencies had determined—or to enforce any attachment or ejectment expressly authorized by Law. This provided for all that was contemplated by the Ouster Bill, which had been referred to a Select Committee, but upon which no Report had been made.

He did not think it necessary to detain the Council with any detailed explanation of that part of the Bill which contained the rules of procedure. They had been taken principally from the

Mr. Currie

Small Cause Courts Bill upon which the Council had bestowed so much pains, with some slight modifications adopted for the most part from the Civil Code prepared by Her Majesty's Commissioners.

By the present Law, when a summary suit for arrears of rent was instituted, the only process against the defaulter was a warrant of arrest. There could be no doubt that the power to obtain such a warrant, had been abused for purposes of oppression. He was not prepared to say that this power should be altogether and absolutely withdrawn; but he did think that it should be restricted as much as possible; and he had, accordingly, provided in the Bill that warrants of arrest should be issued only where special necessity for such process was shewn, and where the party applying made out a good *primâ facie* cause of action.

By the present Law, refusal by a landholder to give a Pottah to a tenant was punishable by a fine. It appeared to him that the Collector ought to be authorized to order a delivery of the Pottah; and that, if the landholder refused to obey the order, the Collector should himself grant a Pottah, which should have the same effect as a Pottah given by the landholder.

The Bill also provided that if, on the trial of a suit for the delivery of the Pottah, the parties did not agree as to the term for which the Pottah was to run, the Collector should have power, within certain limits, to fix such term as under the circumstances of the case he should think proper.

The provisions respecting the execution of decrees were taken partly from the Small Cause Courts Bill and partly from the Code of Civil Procedure.

He had not been able to introduce any provisions for regulating the sale of under-tenures in satisfaction of decrees for rent, because the question of the degree of protection which should be afforded to tenures of the second and lower grades had been referred to the Select Committee on the Sale Law Bill. It appeared to him better, however, that the procedure to be adopted on the sale of such tenures, whether in satisfaction of a decree for rent, or for any other demand, might be more conveniently provided by a separate enactment.

The next part of the Bill related to distraint. The Council had, probably, seen a pamphlet called "*Punjum* Outrages"—*Punjum*, or the fifth, meaning, Regulation V of 1812, which was the Law of distraint and replevin. It could not be denied that the existing Law of distraint bore very hard upon the tenant. Unless, within five days from the date of attachment, the tenant gave security that he would bring a suit to contest the demand against him within fifteen days, his property was liable to be sold; and as there was no intervention of any public Officer between the attachment and the sale, it not unfrequently happened that the first intimation which the tenant received of the distraint was on the very day of sale.

Then, the whole business of sale and of taking security to stay the sale was in the hands of certain Commissioners who were paid by a small commission on the proceeds of the property sold. The average receipts of these Commissioners were, in some districts, not more than one Rupee per month, and in none were they more than ten Rupees per month. It was quite unnecessary to say that agency so remunerated could not be depended upon. In any reform of the system, the first thing to be provided for was the transfer of this duty from the Commissioner now employed, to some trustworthy Officer; and it appeared to him indispensable to securing trustworthiness that the Officer should be paid by a fixed salary, and not by a small and precarious commission. In the North-Western Provinces, he believed that the sales were entrusted to Officers in the Tehseeldar's establishment. In these Provinces, he did not know of any class of public servants more fit to be employed for the purpose than the Civil Court Ameens appointed under an Act of last year. He had, accordingly, provided by the Bill that the duty should be entrusted to the Civil Court Ameens or to such other public Officers as the Lieutenant-Governor should appoint for the purpose.

The next requisite was that the person whose property was distrained should receive due notice of the distraint. He had provided for this by clauses which required that the distrainer should make a written application to the Civil Court

Ameen for the sale of the property distrained, and that the Civil Court Ameen should transmit a copy of such application to the Collector, and should issue a notice to the holder of the property, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector within the period of fifteen days from the receipt of the notice. He had made no provision as to finding security for the institution of such suit. He thought it was better that that part of the existing practice should be discontinued. The holder might, if he pleased, give security, and obtain the release of his property; otherwise, the property would continue under distraint until the case was decided.

These were the principal changes made by the Bill, in respect to Procedure; and, he thought they would have the effect of doing away with most of the objections which were felt to the existing Law. But he would also greatly abridge the power of distraint. At present, a tenant of any grade—the proprietor of a putnee talook, for instance—might have his household goods distrained if he happened to be in arrear. For this, there was no possible necessity. He had restricted the liability to distraint to the case of actual cultivators, and the subject of distraint to the produce of the land in respect of which the arrear was due.

The only remaining portion of the Bill to which he need advert, was that which related to appeals. He thought that, when the matter in dispute was merely a question of the payment of a certain sum either as damages or as arrears of rent, and the amount did not exceed fifty Rupees, no appeal at all should be allowed. But when cases of this kind were decided by Deputy Collectors, he would allow the Collector to revise and set aside the judgment of his Deputy upon grounds of substantial defect of procedure involving denial of justice. Cases of this kind *would*, for the most part, be decided by Deputy Collectors; and, therefore, would generally be open to this revision. When any such cases should be decided by Collectors who were always Officers of standing and experience, he did not think that any such revision would be necessary. But he had provided, as in the Small Cause Courts Bill, for the rehearing of a case, whether it had been tried by a Collector or by a Deputy Collector, whenever new evidence or matter was discovered material to the issue.

In other cases which might involve any more important interest than a simple question of the payment of money, or the payment of a larger sum than fifty Rupees, an appeal must, he thought, be allowed; and he had provided that such appeal should lie to the Zillah Judge. In this, he had followed the suggestion of Messrs. Mills and Harrington.

There was nothing more in the Bill which appeared to him to call for remark. He thought it proper, however, to observe that the Bill, as drawn, extended to the North Western Provinces as well as to Bengal. It had been prepared, and actually in print, before the outbreak of the lamentable disturbances which had involved in anarchy and disorder so large a portion of those Provinces. The introduction of the Bill had been delayed for some months in consequence of that outbreak. But the Bill had been designed primarily and chiefly for the correction of abuses which, under the operation of the existing Law, had sprung up in Bengal, and the correction of which was loudly called for. It did not appear to him necessary to defer any longer remedial measures in this division of the Presidency because of the present unsettled condition of the other. If it should be thought proper, the operation of the Bill might be limited in the first instance to Bengal, and extended to the North Western Provinces at some future period, with any modifications which the circumstances of those Provinces might be thought to require.

In conclusion, he begged to apologize to the Council for the length of time he had occupied in explaining the objects and tenor of his Bill, and to thank them for the patience with which they had listened to him.

The Bill was read a first time.

CALCUTTA PORT-DUES.

MR. CURRIE moved that the Bill "for the levy of Port-dues and fees in the Port of Calcutta" be now read a third time and passed.

The motion was carried, and the Bill read a third time.

BOMBAY PORT-DUES.

MR LEGEYT moved that the Council resolve itself into a Committee upon the Bill "for the levy of Port-dues and fees in the Port of Bombay;" and that the Committee be instructed to consider it in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to IV were passed as they stood.

Section V provided that steamers employed only in the coasting trade, belonging to the Port of Bombay, should be liable to the Port-due specified in Section I (namely, at a rate not exceeding two annas for every ton of burthen); and that such duty should be chargeable in respect of every such steamer once between the 1st of January and the 30th of June, and once between the 1st of July and the 31st of December in each year.

MR CURRIE said, in the Report of the Select Committee, he had stated his opinion to be "that steamers in the coasting-trade should be liable to the same provisions in respect of Port-dues as other coasting vessels." It seemed to him that that ought to be the rule. He could see no reason why a steamer should have privileges over an ordinary coasting vessel. Section III made the Port-due in respect of each vessel payable not oftener than once in the same month; and it seemed to him that this provision ought to apply to steamers as well as to coasting vessels.

MR LEGEYT said, the objections which he felt to render coasting steamers liable to the same provisions respecting Port-dues as other coasting vessels were that the voyages made by them were of very frequent occurrence—very often, four in a month. The voyages which they made were to Surat, and they ran for ten months in the year. If, therefore, Section III should be applicable to them, they would be called upon to pay ten times a year. A steamer had to incur very much greater expense than an ordinary coasting vessel, and did not carry much freight. Among the papers which had been sent up to the Government of India in connection with the general Ports Bill, was a Petition from owners of steamers to the Bombay Government complaining very much of the frequency of the levy of these dues.

The Section in question had been before the Bombay Government. He had called their attention to it by letter, and they had not suggested any alteration. On the contrary, the only communication which they had made was one forwarding a Report by the Commander-in-Chief of the Indian Navy, in which that Officer stated that he had no objections to offer to the Bill.

For these reasons, he should vote that the Section be passed as it stood.

MR. CURRIE said, as a matter of principle, he should vote against the Section. If a coasting steamer ran four times a month between Surat and Bombay, she would, under Section III, have to pay only once; and surely, it would be no hardship to pay once for four voyages.

He might add that this Section had been taken from a Section in the Calcutta Act, which referred to an entirely different class of vessels. It referred to tug steamers and inland steamers. Inland steamers, although they benefited to some extent from the harbor arrangements, derived no benefit whatever from the lights and buoys maintained out of the Port-dues; and tug steamers never made any trips without vessels in tow, and those vessels were themselves charged with the Port-dues.

THE CHIEF JUSTICE said, he should vote for the omission of the Section. He had agreed to its retention in Select Committee, because he had thought that that would be the more convenient mode of bringing before the Council the question which the Honorable Member for Bengal had raised. He had also been moved to that course by the consideration that the Section had been published in Bombay, and had not elicited any remonstrance from the Government or the Public of that Presidency. But in reality, the question had been put before them in a form somewhat different from that in which it now stood in the Bill. The original Section, which was the only one published in Bombay, included Tug steamers, which, it now appeared, did not exist in Bombay, and exempted them, as also coasting steamers, from the provisions of Section XLVI of Act

XXII of 1855—provisions now admitted to be inapplicable to anything at Bombay. It was, therefore, possible that the provision had not received that consideration at Bombay which might have been given to it if it had been put nakedly, and as it now stood, as a proposal to give a privilege to steamers over other coasting vessels. He did not see upon what principle the granting of the privilege was to be justified. To his mind, no satisfactory reason had been given why steamers should have a larger immunity from Port-dues than was given to all coasting vessels by Section III. Every time they entered or went out of the Port, they would enjoy all the advantages derivable from lights, buoys, and other useful purposes to which Port-dues were to be applied —advantages which were of greater consequence to them than to many other kinds of coasting vessels: and if they made more frequent voyages, they would presumably make larger and more frequent profits. He should, therefore, vote with the Honorable Member for Bengal against the motion.

The Section was put and negatived.

Section VI was passed as it stood.

Section VII was passed after the insertion of the words and figures "the first day of 'January 1858" in the blank reserved for the date on which the Act was to commence.

Section VIII and the Preamble and Title were passed as they stood.

The Council having resumed its sitting—

PORT-DUES (TUNKARIA AND BROACH).

MR. LEGEYT moved that it resolve itself into a Committee on the Bill "for the levy of Port-dues in the Ports of Tunkaria and Broach;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

MR. CURRIE said, he did not think that this Bill ought to be proceeded with. It appeared to him that the principle which the Council ought to follow in dealing with these supplementary Bills, was to pass separate Bills for the Presidency Ports, and to provide for the subordinate Ports by arranging them in groups according to their geographical position, or other circumstances of similarity. It could not be desirable that the Council should swell the bulk of the Statute Book by a large number of Acts all in the same terms, except as to the names of the Ports. The Ports of Tunkaria and Broach provided for by this Bill were two out of twelve Ports in the Gulf of Cambay, the circumstances of the whole being precisely the same. The Honorable Member for Bombay had brought in, last Saturday, a Bill for the other ten Ports: and he (Mr. Currie) could see no reason why these two should not be included in that Bill. The Report of the Select Committee stated that 'the majority of the Committee were of opinion, with reference to Act XXIV of 1857, "that this course might cause inconvenience in respect to the Ports to which this Bill relates; and prefer that other Bills should be presented, when ready, for the remaining Ports in the Presidency of Bombay." But the Bill for these ten Ports might be read a second time next Saturday, and there would then be four months during which the existing dues might be collected; and within that period, a consolidated Bill might be passed without difficulty.

Another reason why he objected to the Bill being proceeded with was that all the twelve Ports in the Gulf of Cambay were chargeable with the expenses of Light-houses which were maintained, under Regulation VII of 1831, for vessels navigating the Gulf. He was very strongly of opinion that, in imposing Port-dues in these Ports, it was desirable to abolish the fixed duty of eight annas on every vessel entering the several ports of the Gulf which was now levied. When the Council made an assessment of Port-dues for the Ports, the expenses of the lights maintained for the Ports should be paid out of those dues, and not by a separate charge. Section XLI of the Harbor Act had, indeed, expressly reserved the light duties leviable under Regulation VI of 1831; but he thought this reservation unnecessary; and before the Honorable Member for Bombay submitted a Motion for the second reading of the Bill he had introduced last Saturday, he intended to bring in a Bill for the repeal of Regulation VI of 1831.

THE CHIEF JUSTICE said, on this question, he could not agree with

the Honorable Member for Bengal. He thought that the Council should recollect what it was that they were doing in the matter of these Bills. They were not Bills for the entire regulation of Port-dues in particular Ports. They were simply subsidiary to Act XXII of 1855, which was a general Act passed for the regulation of all Ports. It would be in the recollection of the Council what extreme difficulty they had had in obtaining from the various local Authorities that information which was necessary to enable them to fix the particular rate which was to be levied at each particular Port, and so to enable the local Governments to bring the Ports under them within the operation of the general Act of 1855. The Council had had repeatedly to extend the period during which the existing Port-dues at the different Ports might be collected, because they had been unable to get the necessary data for determining what should be the rates under the system which it was the object of the Act of 1855 to introduce; and this circumstance was neither a satisfactory nor a creditable mode of legislation. They had now got those data as to these two Ports; and the Honorable Member for Bengal called upon them to suspend this Bill, and therefore to suspend the full operation of the general Act in those two Ports, until they were in a condition to embrace in one Bill these two Ports with all those which were in a certain geographical connection with them. He (the Chief Justice) did not deny that it might have been more convenient, if the Government of Bombay had given the necessary information, to embrace in this Bill all the Ports within the Gulf of Cambay. But that Government had not given that information when the Bill was introduced. And he did not see why they should delay legislating for these Ports for the mere convenience of having one Bill instead of two. To his mind, the only plausible reason which the Honorable Member had given for not legislating for the Ports of Tunkaria and Broach until they were included in a Bill relating to the other ten Ports in the Gulf of Cambay, was that a Light-house was maintained at the mouth of that Gulf for the maintenance of which all vessels entering the Gulf had to pay a certain tax. But that argument entirely failed when it appeared that Act XXII of 1855 expressly reserved the dues payable in respect of that Light-house as something distinct from the Port-dues to be levied in the particular Ports under that and the subsidiary Acts. That provision had been inserted on the representation of the Government of Bombay. The Honorable Member for Bengal, no doubt, said he meant to propose a repeal of that provision. Therefore, he not only called upon the Council to suspend legislation as to the Ports of Tunkaria and Broach until he could get a rate of Port-dues fixed for the ten other Ports in the Gulf of Cambay, but to make the Bill something different from a subsidiary Bill to the Act of 1855—to make it a Bill to amend and alter the provisions of that general Act. To that amendment, there were, probably, very substantial objections. Their precise nature was more likely to be known to the Honorable Member for Bombay than to him (the Chief Justice); but he had a clear recollection that that particular provision in the general Act had not been adopted without careful and serious deliberation in Select Committee and in the Council, and on full consideration of the suggestions made through the Bombay Government.

For these reasons, he thought that the Bill should be proceeded with; and he should vote in favor of the motion to go into Committee upon it.

MR. CURRIE said, the Honorable and learned Chief Justice had stated that he had assigned but one plausible reason for including all the Ports in the Gulf of Cambay in one Bill—that, namely, connected with the Light-house. But he (Mr. Currie) had mentioned another reason which the Honorable and learned Chief Justice, in the remarks made by him, had entirely overlooked. His answer to those remarks was that they were not in the least applicable to the case before the Council. As he had said before, the Honorable Member for Bombay had already introduced a Bill for the ten other Ports in the Gulf. There were actually now before the Council two Bills—one for two Ports, and another for ten Ports; and there was plenty of time for including all in one Bill, and passing the Bill, before the period would expire for levying the existing dues,

Therefore, he could see no possible objection to consolidating the two Bills.

It was quite within the scope of the Harbor Act that all buoys, lights, &c., should be paid for out of the Port-dues; and he did not propose that, in the consolidated Bill, any express mention should be made of the Light-dues, or of the repeal of Regulation VI. 1831. It would not differ from the other subsidiary Bills. He could not think, because, when the general Act was passed, the Regulation respecting the Gulf light-duties was reserved, that that was any reason why the Council should not discontinue the levy of a special tax for lights when, on further information, they found it to be unnecessary.

THE CHIEF JUSTICE remarked that the Honorable Member's proposition for throwing the expenses of the light upon the Port-dues would have the effect of disturbing all the calculations on which the estimate of the rates at which Port-dues were to be levied in the different Ports had been framed.

MR. PEACOCK said, the expense of keeping up the Light-house in the Gulf of Cambay was not intended to be paid out of the Port-dues to be levied under this Act. In the Statement of objects and reasons, it was expressly said:—

"The sums received at both these Ports for Light-dues are levied under Regulation VI of 1831 and Act I of 1836; and under the latter Act, the Government may apply the funds to other purposes than the Peerum Light-house, which is the special object of Regulation VI of 1831; and therefore to defray the charges of the Ports of Tunkaria and Broach. The object, however, of the levy of these Light-dues was undoubtedly to improve the navigation of the Gulf of Cambay; and it seems desirable not to divert those funds to the benefit of any particular Port within it."

Consequently, the estimate upon which these Port-dues were to be levied, excluded altogether the Light-dues, which were to be continued to be levied in addition. He, however, thought that it would be more convenient to include the Ports of Tunkaria and Broach in the Bill for the ten other Ports in the Gulf of Cambay which was read a first time last Saturday. He did not see any necessity for passing this Bill before that which provided for the other ten Ports; and, as the Honorable Member for Bengal had stated that it was his intention to bring in a Bill to repeal Act I of 1836, he thought that it would be better to postpone the consideration of this Bill, and to consolidate it with the Bill relating to the other Ports in the Gulf of Cambay.

MR. LEGEYT said, he did not deny that this course might be more convenient in appearance; but from what the Honorable Member for Bengal himself had stated to-day, it was evident that its adoption might result in considerable delay. The Bombay Government were likely, as it was, to suffer a very serious loss of revenue with regard to these Port-dues, because, besides these twelve Ports of which they had forwarded particulars, there were thirty-eight Ports of which they said they had no data, adding that there was no possibility of stating what their requirements would be unless a survey of them was made. He did not believe that that survey could be completed in less than three years. For his own part, he could not see any great objection to passing this Bill, which would form probably a useful guide as to what should be done with other Ports at a future time. He should, therefore, press his motion that the Council resolve itself into a Committee upon the Bill.

MR. CURRIE moved as an amendment "that the Bill should not be farther proceeded with, until the Bill 'for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay' should be read a second time." In moving this amendment, it was his intention, if it was carried, to move, after the other Bill was read a second time and referred to a Select Committee, that the present Bill be referred back to that Committee, with instructions to consolidate both into one Bill.

The amendment being put, the Council divided:—

Ayes.	*Noes.*
Mr. Currie.	Sir Arthur Buller.
Mr. Peacock.	Mr. LeGeyt.
2	General Low.
	The Chief Justice.
	The Vice-President.
	5

The amendment was, therefore, negatived, and the original motion carried.

Sections 1 to III were passed as they stood.

Section IV was passed after the insertion of the words and figures "the

Mr. Currie

first day of January 1858" in the blank reserved for the date on which the Act was to commence.

Section V and the Preamble and Title were passed as they stood.

The Council having resumed its sitting, both Bills were reported.

MUNICIPAL ASSESSMENT (SUBURBS OF CALCUTTA, AND HOWRAH).

MR. CURRIE moved that a communication which he had received from the Government of Bengal be laid upon the table and referred to the Select Committee on the Bill "for raising funds for making and repairing roads in the Suburbs of Calcutta and in the Station of Howrah."

Agreed to.

PORT-DUES (GULF OF CAMBAY).

MR. LEGEYT gave notice that, on Saturday next, he would move the second reading of the Bill "for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay."

MUNICIPAL ASSESSMENT (SUBURBS OF CALCUTTA, AND HOWRAH).

MR. CURRIE moved that General Low be added to the Select Committee on the Bill "for raising funds for making and repairing roads in the Suburbs of Calcutta, and in the Station of Howrah."

Agreed to.

The Council adjourned.

Saturday, October 17, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.,
Hon. Major General J. Low,	E. Currie, Esq., and
Hon. B. Peacock,	Hon. Sir A. W. Buller.

THE ESTATE OF THE NUWAUB OF SURAT.

THE CLERK presented a petition from Meer Jafir Ali Khan Behadoor, of Surat, on the part of himself and the widow and grand-daughters of the last Nuwaub of Surat.

The Petitioner stated that by Act XVIII of 1848 special provision was made for the administration of the late Nuwaub's estate, and that the Petitioner having appealed to the Privy Council against an order made by the Government of Bombay in the matter of the administration, it was determined by the Privy Council that, upon the true construction of the Act, this order of the Government was not a judicial act and that the appeal could not be entertained. The Petitioner further stated that, for reasons which he alleged, it was not contemplated that the Act would have the operation ascribed to it by this interpretation; and he prayed that an Act might be passed to amend Act XVIII of 1848 so as to allow a right of appeal to the Privy Council.

MR. LEGEYT moved that this Petition be printed.

Agreed to.

PORT-DUES (GULF OF CAMBAY).

The Order of the Day being read for the second reading of the Bill "for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay"—

MR. LEGEYT said, before moving the second reading of the Bill, he wished to mention that, in the course of this week, he had received a communication from the Government of Bombay respecting these Port-dues; and he would endeavour to explain, in a few words, how the matter now stood.

The Government of Bombay were originally desirous that the Port-dues for all the minor Ports of that Presidency should be provided for in one Bill at a uniform rate. In answer to this suggestion, he had told the Government that he thought that their proposition was opposed to the spirit of Section XLIV of Act XXII of 1855 (which provided that "for every Port at which Port-dues shall be levied under this or any subsequent Act, a distinct Account of the Port-Fund of the Port to which it relates, shall be kept by such Officer as the Local Government may appoint for that purpose"); and he wrote to the Government that, in the face of that Section, and also of the discussion which had taken place on Schedule C. of the Ports Bill in July 1855, he saw no chance of passing such a Bill through the Council, and recommended that a separate Bill should be framed for each Port. Subsequently, the Honorable Member for Bengal brought forward a Bill "for

the levy of Port-dues in certain Ports in the Province of Cuttack," which was a measure framed on the same principle on which the Government of Bombay had been desirous that he should proceed with regard to the minor Ports of that Presidency. He (Mr. LeGeyt) sent up to the Government of Bombay that Bill and its annexures, and recommended that, if they still thought it would be better to legislate for all the Ports by one Bill fixing a uniform rate of dues, he would follow that course, provided they could shew that the circumstances of the Ports were as much alike as were those of the Cuttack Ports, since it would remove the difficulties which were felt at Bombay, particularly with respect to the thirty-eight Konkan Ports, arising from an inability to state what improvements were required at each. The answer to this communication reached him only this week. The Government of Bombay had forwarded to him a letter from Mr. Spooner, the Commissioner of Customs, Salt, and Opium, which said—

"Mr. LeGeyt forwards copy of Mr. Currie's proposal relative to the levy of Port-dues at Cuttack, and suggests that the same plan be adopted in respect to the whole of the Guzerat and Konkan Ports."

This suggestion, Mr. LeGeyt remarked, he had coupled with the further suggestion that the circumstances of the Guzerat and Konkan Ports must be shewn to be similar to the circumstances of the Cuttack Ports.

Mr. Spooner then proceeded to state what he considered the plan proposed for Cuttack to be, and continued thus—

"If Mr. Currie's plan was adopted in respect to our Ports, the only difference would be that the calculation would be in *Bombay* Maunds and *Bombay* Candies, instead of in Bengal maunds——"

and it shewed that the rate would be four annas per 3¼ tons.

Mr. Spooner then went on to say—

"Mr. Currie's plan is, I would humbly submit, well adapted to meet the wants of our Ports, and will remove all the difficulties brought to notice in my Report No. 1090 dated the 3rd July last, and in my Letter No. 1464 dated the 29th August last."

Farther on, he said—

"I would respectfully beg to suggest that Mr. LeGeyt should be informed that Mr. Currie's description and remarks relative to the Cuttack Ports are generally applicable to the Continental Ports, and that an Act, as proposed by him, would meet the wants of our Continental Ports."

Mr Spooner then entered into detailed Statements shewing what, if the plan recommended for the Cuttack Ports were adopted for the Konkan and Guzerat Ports, the amount of Port-dues realized from them would be. It was considerably less, as to each Port, than that at present realized from anchorage fees and light-dues; but Mr. Spooner suggested that the sums collected at each Port should form a general Fund, and be applied to the purposes of such Port or Ports as the Local Government might think fit.

The Government of Bombay, in their Letter to him, stated that they "concur in the opinion expressed by that Officer, that an Act on the plan proposed by Mr. Currie for the levy of Port-dues at Cuttack will meet the wants of the Continental Ports under this Presidency."

Now, if the Council should approve of the principle adopted in regard to the Cuttack Ports being extended to all the Ports in the Presidency of Bombay, which were fifty in number, exclusive of the Ports of Bombay and Kurrachee, he had no doubt that the wants of all those Ports would be met. If, therefore, they thought that it was compatible with Section XLIV of Act XXII of 1855 that such a Bill should be framed, he should be very glad to withdraw the present Bill, and prepare another on the principle recommended by the Government of Bombay. He did not, however, think that the circumstances of all the Ports were similar to those of the Cuttack Ports. In some points, the requirements were similar to each other: but in respect to proposed improvements, they were different—some consisting of piers and jetties, others of roadways and deepening of creeks, &c.

He should not be willing to press upon the Council the present Bill as it now stood, if they were disposed to accept a Bill such as that which had been proposed by the Bombay Government; but as long as Section XLIV of Act XXII of 1855 stood in its present shape, he did not very well see how that could be done.

MR. CURRIE said, before referring to what had just fallen from the Honorable Member for Bombay, he desired to say a few words in explanation of a statement which he had made last Saturday in connection with this Bill. He had stated that it was his intention to bring in a Bill to repeal Regulation VI of 1831, which provided for the collection of Light-duties from vessels entering the Ports situated in the Gulf of Cambay. On further consideration, he had determined not to bring in the Bill, because he thought that such a course was not absolutely necessary, and that it would be better, and more consistent with the consideration due to his Honorable friend and to the Bombay Government, to leave the question to be considered by the Select Committee which might be appointed upon this Bill. He understood from the Honorable Member for Bombay that it was his intention to bring the subject of Light-duties in connection with the proposed Port-dues to the notice of the Government of Bombay. If the Select Committee to be appointed on the Bill, and the Council, should be of opinion that the Light-duties should be abolished, and the expenses of the Light-houses charged to the Port-dues, a Bill might then be brought in for that purpose, and passed at once.

With reference to the remarks made by the Honorable Member for Bombay to-day, the Honorable Member was quite right in saying that the circumstances of the Konkan and Guzerat Ports were not identical with those of the Cuttack Ports, the Bill regarding which had been read a first time on the 22nd of August last. He had determined to treat those Ports, which were all situate in the district of Balasore, as if they were parts of one Port, because they were all under the supervision and control of one Officer, the Master Attendant stationed at Balasore; and the great expense incurred at Balasore, therefore, was not an expense incurred for Balasore alone, but for all the Ports. These so-called Ports were merely small creeks and rivers used exclusively by native craft; and these native craft belonged, he believed, almost entirely to the Port of Balasore.

Although, however, the circumstances of the Guzerat Ports were not identical with those of the Cuttack Ports, still he thought that there was some degree of similarity between the two cases; and his own opinion was that it would be both unobjectionable and convenient to have a uniform rate for all the Ports of the Gulf. At present, the only expenses incurred in connection with them were on account of the Light-duties, and they were common to all the Ports. Then, he conceived that the trade of the Gulf must be in a great measure an interport trade; and any facilities for which expenses might be incurred in any Port in the Gulf, would benefit all the Ports within it. Vessels belonging to a particular Port would resort to any other Port in which there might be any increase of trade; and they would benefit from its arrangements equally as much as any vessel belonging to the Port itself.

It, therefore, appeared to him that it would be unobjectionable in principle, if the collections from the Ports to which the Bill before the Council referred were thrown into a general Fund, the general expenses of the navigation of the Gulf and the expenses of each Port defrayed from it, and the remainder made applicable for improvements in the several Ports.

On these grounds, he was disposed to think that the suggestion of the Bombay Government was worthy of consideration.

THE CHIEF JUSTICE asked whether the Honorable Member for Bombay intended to move the second reading of the Bill or not?

MR. LEGEYT said, he had wished to hear the Honorable Member for Bengal on the question whether the circumstances of the Konkan and Guzerat Ports were identical with those of the Cuttack Ports. Looking at the facts just mentioned by the Honorable Member, he thought that the better course would be to proceed with the present Bill, and, when it was referred to a Select Committee, to instruct the Committee to take into consideration the communication from which he had read, with the view of altering the Bill so as to meet the the views of the Bombay Government.

THE CHIEF JUSTICE said, he thought that the more convenient course would be that the Bill should be read a second time and referred to a Select

Committee, and that then the Honorable Member for Bombay, if he thought fit, should introduce a Bill raising the question which had been discussed between himself and the Honorable Member for Bengal. If the Council should agree to read that Bill a second time, and the present Bill were thereby rendered unnecessary, the Select Committee appointed upon it might be discharged.

The plan which was suggested by the Government of Bombay, and which he understood the Honorable Member to be willing to adopt, was that there should be one Bill for a cluster of Ports, and that the general Bill should be so modified that the Port-dues collected at each Port, instead of being applied exclusively to the purposes of that particular Port, should be carried to a general Fund to be formed for the requirements of all the Ports. But that would change altogether the principle of the present Bill, which proposed to raise duties for the Ports to which they related on the principle of Act XXII of 1855.

MR. LEGEYT then moved that the Bill be read a second time.

The Motion was carried, and the Bill read a second time.

PORT-DUES (BOMBAY).

MR. LEGEYT moved that the Bill "for the levy of Port-dues and fees in the Port of Bombay" be now read a third time and passed.

The Motion was carried, and the Bill read a third time.

PORT-DUES (TUNKARIA AND BROACH).

MR. LEGEYT postponed his Motion (which appeared in the Orders of the Day) for the third reading of the Bill "for the levy of Port-dues in the Ports of Tunkaria and Broach."

MERCHANT SEAMEN.

MR. CURRIE gave notice that he would, on Saturday the 24th instant, move the first reading of a Bill to amend the law relating to Merchant Seamen.

PORT-DUES (BOMBAY).

MR. LEGEYT moved that General Low be requested to take the Bill "for the levy of Port-dues and fees in the Port of Bombay" to the Governor-General for his assent.

Agreed to.

PORT-DUES (CALCUTTA).

MR. CURRIE moved that General Low be requested to take the Bill "for the levy of Port-dues and fees in the Port of Calcutta" to the Governor-General for his assent.

Agreed to.

PORT-DUES (GULF OF CAMBAY).

MR. LEGEYT moved that the Bill "for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay" be referred to a Select Committee consisting of the Chief Justice, Mr. Currie, and the Mover—with an instruction to take into consideration such communications on the subject as had been received from the Government of Bombay.

Agreed to.

MR. LEGEYT moved that a communication received by him from the Government of Bombay relative to the levy of Port-dues in the Continental Ports under that Presidency, be laid upon the table and referred to the Select Committee on the Bill "for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay."

Agreed to.

SALE OF GANJA (BOMBAY).

MR. LEGEYT moved that a communication received by him from the Government of Bombay be laid upon the table and referred to the Select Committee on the Bill "relating to the sale of Ganja in the Presidency of Bombay."

Agreed to.

The Council adjourned.

Saturday, October 24, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.
Hon. Major General J. Low,	E. Currie, Esq. and
Hon. B. Peacock,	Hon. Sir A. W. Buller.

The Chief Justice

The following Messages from the Governor-General were brought by General Low and read:—

PORT-DUES (CALCUTTA).

MESSAGE No. 117.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 10th October 1857, entitled "a Bill for the levy of Port-dues and fees in the Port of Calcutta."

By order of the Right Honorable the Governor-General.

CECIL BEADON,
Secy. to the Govt of India.

FORT WILLIAM,
The 23rd Oct., 1857.

PORT-DUES (BOMBAY).

MESSAGE No. 118.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 17th October 1857, entitled "a Bill for the levy of Port-dues and fees in the Port of Bombay."

By order of the Right Honorable the Governor-General.

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 23rd Oct., 1857.

SPECIAL APPEALS (BENGAL).

THE CLERK brought under the consideration of the Council a Petition of Sree Mutty Hurromohinee Dassee and Romanath Ghose, residents of Zillah Midnapore, praying, with reference to certain judicial decisions concerning the mode of computing the time within which special appeal Petitions must be presented, that Act XVI of 1853 may be amended.

MR. PEACOCK moved that the above Petition be referred to the Select Committee on the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bengal."

Agreed to.

MERCHANT SEAMEN.

MR. CURRIE moved the first reading of a Bill "for the amendment of the law relating to Merchant-Seamen."

He said, the question of the amendment of the Law relating to Merchant Seamen had long been before the Legislature. In the List of business depending before the Government of India at the time the Council was constituted, there would be found several entries bearing on the subject. The Committee which had prepared that List remarked, in reference to those entries—"We are of opinion that this is a question of great importance, and one deserving of the earliest attention of the Legislative Council."

The present Law on the subject was comprised in Act XXVII of 1850, which was entitled an Act for the Registry of Merchant Seamen, and in Act XXVIII of the same year, which was entitled an Act for the encouragement of Merchant Seamen. The Registry Act was generally considered to have failed of its object altogether. One palpable cause of this failure was that the Act, according to the construction put upon it by the Supreme Government in 1851, rendered it imperative on the Registrar to grant a Register Ticket to every seaman who was unprovided with one, even though the seaman might have forfeited his previous Ticket by desertion from his vessel. But, independently of this defect, the whole system introduced by the Act was thought to be ineffective. Apparently, the same system had been found equally ineffective in England, for the practice of granting Register Tickets had been abolished there in 1853. There seemed to be very sufficient reasons for abolishing it here likewise.

In the year 1851, the question of the advisability of extending to India certain provisions of the Mercantile Marine Act, in extension of the local Act (XXVIII of 1850), had been referred to the several local Governments, and all had reported in favor of the measure. Within the last two months, he had received a communication from the Bengal Government, with an Opinion by the Advocate General, having reference, apparently, to a question regarding the proper form of agreement to be made

use of in the case of seamen shipped in India on vessels registered in the United Kingdom, or in any British possession out of India, the question being whether the agreement should be entered into according to the local Act, or according to the English Merchant Shipping Act of 1854, which had taken the place of the Mercantile Marine Act of 1850. Mr. Ritchie, after stating his opinion on the case referred to him, proceeded to say—

"It appears to me, as I have on some former occasions suggested, that it would be much for the convenience of the shipping interests generally, if the Governor-General in Council were to extend and adapt to India, under the 288th Section, the general provision of the third part of the English Act of 1854, relating to masters and seamen, so as to place ships registered in India in the same position as to the qualification and duties of masters, and the shipment and duties of seamen on the same footing as ships registered in the United Kingdom, with such exceptions as to native vessels or seamen as may be deemed advisable. I think it will be desirable, also, that the system of Registry Tickets, which has been abolished in England since it was introduced by Act XXVII of 1850 in India, should be abolished here also—at all events as to sailors not being natives or lascars; and that the whole system of the engagement of seamen should be regulated in the same manner as in England."

In pursuance of Mr. Ritchie's recommendation, and in accordance with a wish expressed by the Bengal Government, he had taken up the subject, and, with the assistance of the Clerk of the Council, had prepared a Bill repealing the Registry Act and Act XXVIII of 1850, and, in lieu of the latter, applying and adapting such portions of the English Merchant Shipping Act as appeared to him suited to the circumstances of this country.

With the permission of the Council, he would state the principal points upon which the Bill differed from the English Statute.

The first heading of the English Statute was "Local Marine Boards," in reference to which it was provided that—

"There shall be Local Marine Boards for carrying into effect the provisions of the Act under the superintendence of the Board of Trade at those sea-ports of the United Kingdom at which Local Marine Boards have heretofore been established, and at such other places as the Board of Trade appoints for this purpose."

There did not appear to be any necessity for the establishment of such Boards in India; and wherever those parts of the English Statute which had been imported into this Bill required particular acts to be performed by Local Boards, the Bill provided that the acts should be performed either by the local Governments, or by Officers appointed by the local Governments, as in each case seemed suitable.

The next heading of the English Statute was "Shipping Offices." The Clauses relating to the establishment of Shipping Offices of course were necessary, and had been adopted in the Bill with some slight omissions and modifications.

The next heading of the Statute was "The Examinations and Certificates of Masters and Mates." Many persons qualified to give an opinion on the subject had stated that some provisions of the kind made under this heading were very much required in India. The Shipburning Committee, the Superintendent of Marine, the Chamber of Commerce in Bombay, and the Commander-in-Chief of the Indian Navy, had all expressed an opinion to that effect.

In the English Act, provision was made for two classes of Certificates—Certificates for Masters or Mates of Foreign-going ships, and Certificates for Masters or Mates of Home-trade passenger ships. Following the English Act, this Bill also provided for two grades of Certificates, one for Foreign-going ships, that was, for ships trading to any place not in the territories of the East India Company or the Continent of India or the island of Ceylon; and the other for Home-trade ships of a burthen not exceeding three hundred tons. This, it seemed to him, was the nearest approach which could be made to the English Statute. He was not sure, however, that the distinction was the best that could be selected, or, indeed, that there should be any distinction at all. But upon that point, after the publication of the Bill, the Council would doubtless be assisted by the opinions of the Marine Officers of Government, of ship-owners, the Chambers of Commerce, and others able to give useful advice

In connection with this part of the Bill a difficulty had been felt with respect to

ships trading between the Indian Ports and the Coast of Arabia. These ships were of large size, and many of them had British registers under the local Act; and they were manned usually by Arabs, or other Asiatic seamen, and commanded by Asiatic Masters. These Masters, or Nacodas as they were called, could hardly be subjected to the examinations provided for European Masters; and therefore the Bill gave authority to the local Governments, if they should think fit, to prescribe rules according to which persons so situated should be examined.

The provisions in the English Statute respecting "Apprenticeships to the Sea-service" were not applicable to India, and had not therefore been introduced into the Bill.

"The Master of every ship, except ships of less than eighty tons (registered tonnage) exclusively employed in trading between different ports on the Coast of the United Kingdom, shall enter into an agreement with every seaman whom he carries to sea from any Port in the United Kingdom as one of his crew."

The exception adopted in the Bill corresponded with the exception provided in the existing Law, Act XXVIII of 1850—namely, ships not exceeding three hundred tons burthen employed exclusively in the Home-trade. It appeared to him to be quite unnecessary to require the execution of agreements in the case of country craft above the English limit of eighty tons employed in coasting voyages. These vessels ranged, he believed, from twenty to two hundred tons, and they would all be excluded by adopting a limit of three hundred tons.

He had inserted a proviso that, in the case of lascars or other native seamen shipped in this country, the agreement should contain a stipulation for providing them with the means of returning to this country. The stipulation was to bind the owners, and might, he supposed, under Section CCLXXXVIII of the English Act, be enforced in England, as the Act expressly provided that the agreement might contain any stipulations not specified in the Act which were not contrary to Law.

He had also inserted a Section in the Bill making the rules respecting agreements applicable to Foreign ships which take seamen from any Indian Port. The necessity for this had been urged both by the Bengal Government and by the Governor of the Straits.

He had thought it advisable to retain Section XI of the existing local Act, which authorized Shipping Masters to go on board ships which had taken crews in Indian Ports, for the purpose of seeing that no seaman had been shipped contrary to the provisions of the Act.

The next subject of the Bill was the regulation of advances to seamen. There were no provisions on this subject in the present English Act, although there had been such in the Bill as originally presented to Parliament. It seemed to him to be very necessary that there should be some Law on the subject in this country, especially with the view of restricting the amount of advances. This had been strongly urged by the Ship-burning Committee, and supported by the Bengal Government. The Sections in the Bill had been taken from the Mercantile Marine Act of 1850; and the amount of advances was limited, according to the recommendation of the Ship-burning Committee, to an amount equal to one month's wages.

It was not necessary that he should go through all the headings of the English Act. He thought it sufficient to observe that those parts of the Act which could be advantageously extended to India had been adopted in this Bill, with such omissions and modifications as the circumstances of the country seemed to require. Thus, he had adopted, with more or less modification, the Clauses respecting "Allotment of Wages," "Discharge and payment of Wages," "Legal Rights to Wages," all the Clauses respecting "Discipline," "Official Logs," and some others. There were other parts of the Act which were clearly inapplicable to India. Such were the provisions regarding "Remittance of Wages and Savings' Banks for Seamen," and "Relief to Seamen's Families out of Poor Rates." There were others in which the English Act was of general application, as "Volunteering for the Navy;" and others, again, in which the provisions of the English Act were, by the terms of the Act, of force in respect of ships registered in India without the necessity of any local enactment—such as "Leaving Seamen abroad," "Naval Courts, and Crimes committed on the high seas and abroad."

All these had been omitted from the Bill.

The Clauses in the English Statute respecting the provisions and accommodation to be furnished to seamen had been adopted with some modifications. It had been thought necessary to make some difference in the amount of compensation to be allowed in the case of a European seaman and in the case of a lascar when the quantity of provisions supplied was less than the quantity stipulated for in the agreement. In the present local Act no such distinction was made.

With respect to the provisions regarding Medicines, and Hurt and Injury to Seamen, he had retained two Sections of the local Act (XXIII and XXIV), instead of adopting the provisions of the English Act, the former being more suitable to the circumstances of the country.

He had inserted a Section which allowed a Shipping Master of his own motion to go on board any ship in which seamen had been shipped in any Indian Port, for the purpose of inspecting the provisions and accommodation provided for the crew. This was in accordance with a suggestion made by the Calcutta Superintendent of Marine.

With regard to the "Registration of, and Returns respecting Seamen," the English Act provided for a general Register and Record Office of Seamen in the Port of London, for the transmission to the Registrar General of agreements and other papers; and for the preparation of a general Register of all persons who served in ships subject to the provisions of the Act. It seemed to him that no such general registration as this could be established in this country. Certainly, no advantage could be expected from it, which would not be very much more than counterbalanced by the trouble and expense which the maintenance of the Office would entail. The Clauses, therefore, had been omitted from the Bill.

He thought it unnecessary to occupy the time of the Council with any further remarks, and would conclude by moving the first reading of the Bill.

The Bill was read a first time.

RECOVERY OF RENTS (BENGAL).

MR. CURRIE gave notice that he would, on Saturday the 31st Instant, move the second reading of the Bill "to amend the Law relating to the recovery of Rent in the Presidency of Fort William in Bengal."

PORT-DUES (ADEN).

MR. LEGEYT gave notice that he would on the same day move the first reading of a Bill "for the levy of Port-dues in the Port of Aden."

The Council adjourned.

Saturday, October 31, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.
Hon. Major General J. Low,	E. Currie, Esq. and
Hon. B. Peacock,	Hon. Sir A. W. Buller.

GANJA (BOMBAY).

MR. LEGEYT presented the Report of the Select Committee on the Bill "relating to the sale of Ganja in the Presidency of Bombay."

PORT-DUES (ADEN).

MR. LEGEYT moved the first reading of a Bill "for the levy of Port-dues in the Port of Aden." This Bill, he said, had been framed on the same principles as those of the Bills relating to the other Ports under the Presidency of Bombay. It appeared, from a Statement forwarded by the Government of Bombay, that all projected expenses for the Port of Aden would be sufficiently provided for by a duty of one anna per ton, not leviable oftener than once in each calendar month, on each vessel arriving at the Port, fishing-boats excepted. The only peculiarity in the Bill was this. Some doubts had been entertained as to whether Section XLVI of Act XXII of 1855 should be adopted in the Bill. That Section required every vessel, under a penalty of a hundred Rupees, to report its arrival in Port within a certain space of time. He had thought it better to exclude that provision from this Bill, as it might be found

inconvenient to impose it on Mail Steamers, whose stay in the Port was very often of shorter duration than twenty-four hours.

The Bill was read a first time.

RECOVERY OF RENTS (BENGAL).

MR. CURRIE moved the second reading of the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal."

MR. PEACOCK said, before the Bill was read a second time, he wished to make a few observations upon it. It appeared to him to have been prepared with great care—it contained many very excellent; provisions and great credit was due to the Honorable Member for Bengal for the labor which he had bestowed upon it. But there were two points which involved questions of principle, and upon which he did not wish to be considered as binding himself in giving his assent, as he intended to do, to the Motion for the second reading.

The first point related to a question of revenue, namely, the stamp-duty in suits instituted under the Bill. Section XXVII provided as follows:—

"The statement of claim shall be written on paper bearing a stamp of the value of eight annas; but if the Collector be satisfied of the inability of the plaintiff to pay for a stamp, he may receive such statement on plain paper. No stamp shall be required in respect of any petition or other proceeding connected with the suit or with the execution of any order or judgment passed thereon, or for copies of any papers."

By Section XVII, certain suits which must now be preferred in the Civil Courts as regular suits, were required to be preferred before the Collector. In all these cases, therefore, instead of the stamp-duty required by the existing law, there would be only an eight-annas stamp for the statement of claim. By Regulation VIII of 1831, claims in summary suits which might be preferred before a Collector were liable to a stamp-duty of one-fourth of the value payable in regular suits: but the eight-annas stamp-duty imposed by the Bill would, in many cases, be less than one-fourth of the stamp-duty payable in a regular suit. The result, he believed, would be a considerable loss to Government. Her Majesty's Commissioners, by whom the Code of Civil Procedure was prepared, recommended that all judicial stamps should be abolished, but the Government of India recorded its opinion that financial considerations rendered it at present impossible to sacrifice the large amount of revenue derived from that source, and the Clause proposed by the Commissioners was excluded from the Bill which was introduced into the Council for giving effect to the Civil Code. No one could be more desirous for the abolition of all stamp-duties upon legal proceedings than himself; but, in the present state of the finances of the country, he was unwilling to give his assent to the proposed alteration of the stamp-duties. He had been unable as yet to ascertain the amount of loss which would be caused by the proposed change. He believed that it would not be less than from one to two laks of rupees a year, and he did not think that the Council ought to pass the Bill as it stood without knowing more accurately than they did at present what was the probable amount of the loss which Government would sustain by the alteration. He thought that it would be far better that the Bill should leave the question of stamp-duties untouched, in the same way as the Bill relating to Civil Procedure had done. The whole question relative to stamp-duties upon legal proceedings would then be open for discussion upon a Bill for amending and consolidating the stamp-duties. Probably, the best mode of dealing with the matter would be to allow the Bill to be read a second time, and to refer it to a Select Committee with special instructions to report upon the expediency of making the proposed change before the Bill was published. If they should be of opinion that the change ought not to be adopted at present, the Bill would be modified accordingly, and then published for general information. It would not be fair to the public to publish the Bill in a form in which it proposed reduced stamp-duties, and then to alter it in Committee so as to retain the present duties.

The other point upon which he did not wish to be considered as pledging himself by his vote for the second reading of the Bill was that which related to the Officers by whom suits under the Bill were to be cognizable Many cases which must at present be instituted as

regular suits in the Civil Courts were transferred to the jurisdiction of Collectors exclusively. For instance, Clauses 1 and 5 of Section XVII transferred to the Collector the following cases:—

"All suits for the delivery of pottahs or kubooliyets, or for the determination of the rates of rent at which such pottahs or kubooliyets are to be delivered.

"All suits to eject any ryot or cultivator, or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a ryot or cultivator may be liable to ejectment or a lease may be liable to be cancelled.

All questions of that nature must be tried as the law now stood in regular suits in the Civil Courts; but the Section enacted that they, and also several others

"shall be cognizable by the Collectors of land revenue and shall be instituted and tried under the provisions of this Act and shall not be cognizable in any other Court, or by any other Officer, or in any other manner."

In short, by that Section, suits which now could be instituted only as regular suits in the Civil Courts, must be tried by the Collector; and suits which might now be instituted before the Collector as summary suits and might also at the option of the party be tried as regular suits in the Civil Courts, must likewise be carried before the Revenue Authorities. Now, many difficult questions might arise in some of these cases; and he thought there were many which had better be left to the ordinary Civil Courts under the new Code of Procedure than limited exclusively to the cognizance of the Revenue Authorities. It was not to the Collector alone that the cognizance of these suits was entrusted. By Section CXXXVIII,

"All the powers vested in the Collector by the preceding Sections of this Act may be exercised by any Deputy Collector in cases referred to him by a Collector, and in all cases, without such reference, by any Deputy Collector having local jurisdiction in any subdivision of a District."

Thus a Deputy Collector might adjudicate upon cases which, under the present law, could only be tried in the Civil Courts, provided such cases were referred to him by the Collector; and he might adjudicate in like manner without any such reference if he had local jurisdiction in any sub-division of a district.

Now, if the Bill were to take away from ryots and others the right which they at present had of bringing their suits before the regular Courts, and were to refer them for a remedy to the Collectors and Deputy Collectors, the first question that arose was, who were to be the Deputy Collectors, from what class were they to be selected, and were the Deputy Collectors to be as numerous as the Civil Courts. In a Despatch from the Honorable Court of Directors dated 24th September 1856, the Honorable Court, speaking of the union of fiscal and magisterial duties, said—

"To remedy the evils of the existing system, the first step to be taken is, wherever the union at present exists, to separate the police from the administration of the land revenue. No Native Officer should be trusted with double functions in this respect. We do not see the same objection to the combination of magisterial and fiscal functions in the hands of our European officers, because we can better hope they will not abuse their powers, and because, by employing the Collector as the principal Magistrate of each district, we are able to obtain for the chief administration of the penal laws a more efficient, and especially a more experienced class of Officers than would otherwise be available. This is an important consideration which ought never to be lost sight of. Nevertheless, it is still more important that the Officers who control the police should be required to undertake frequent tours of their districts And they must not be so burdened with other duties, such as the preparation of forms, returns, and statements, as to be deprived of the time sufficient for this essential purpose. This supervision, exercised by intelligent Officers, who are accessible at all times, is the most certain and effectual check to every abuse of authority by subordinate servants of police."

He apprehended, therefore, that it was not intended that Native Deputy Magistrates should be made Deputy Collectors for revenue purposes. He understood that the Lieutenant-Governor of Bengal had appointed many Deputy Magistrates to be Deputy Collectors, not for the purpose of exercising all the powers of Deputy Collectors, but merely for the purpose of deciding summary suits relating to rent. It had been said that there was an advantage in referring suits relating to rent to the Revenue Authorities, because the knowledge and experience which they acquired in the discharge of their revenue functions enabled them to decide such suits better

than the Civil Courts. But, admitting for the sake of argument that such was the case, a Deputy Magistrate who was made a Deputy Collector merely for the purpose of deciding such suits would have no advantage over the Civil Courts by reason of his experience in revenue matters. If he were made a Deputy Collector, not for the purpose of exercising all the powers of a Deputy Collector, but for the purpose of exercising the single power of adjudicating summary suits for arrears of rent, there could be no use in calling him a Deputy Collector. He was in reality not a Deputy Collector, and it would be more correct to say "that these suits might be tried by a Deputy Magistrate." The Lieutenant-Governor had said that he had invested Deputy Magistrates with the powers necessary to enable them to administer summary justice in revenue suits as an experiment. But whilst the experiment was going on, and before the result could be known, the Honorable Member for Bengal brought in this Bill, giving to Collectors and Deputy Collectors jurisdiction in a new class of suits which had never been tried as summary suits before, involving important and difficult questions which under the present law could be determined by the Civil Courts only in regular suits. Very recently the British Indian Association had addressed the Lieutenant-Governor objecting to the appointment of Deputy Magistrates to be Deputy Collectors.

They said,

"The Committee of the British Indian Association request the favor of your laying before His Honor the Lieutenant-Governor of Bengal their views respecting some recent appointments made under His Honor's orders by which Deputy Magistrates have been invested with the powers of Deputy Collectors with authority to adjudicate summary suits for the recovery of rents &c.

"The Committee feel confident that these appointments have been made with due regard to the qualifications of the individual Officers vested with the united offices, but they yet believe that the system of entrusting to the same hands the authority and powers of Deputy Magistrates and Deputy Collectors is open to grave objections.

"The question, as His Honor must be aware, is not a new one, and has more than once been most elaborately discussed. And it was after such discussion that, in Bengal, it was resolved to keep the district magistracy separate from the revenue administration. The Commissioners lately entrusted with the task of enquiring into the practice of torture in the Presidency of Madras, after a searching and patient investigation, have also arrived at the conclusion that the union of magisterial and fiscal functions in the hands of district officials is one of the principal causes of the many administrative evils prevailing in that Presidency.

"The importance of the jurisdiction exercised by Deputy Collectors in their judicial capacity cannot be over-estimated. On the proper administration of the laws for the summary trial of claims to rent &c. depends, more than upon any other branch of the judicial system, the prosperity of all classes of the community connected with the land. A single unjust decision often involves thousands of tenants in difficulties. It does not therefore appear to the Committee of this Association expedient to place so important a branch as the civil administration in the hands of persons for whose capacity to undertake it there is no reliable guarantee.

"The duties of a Deputy Magistrate, the Committee further observe, are such as to engross even in the smallest sub-division all the energies and attention of a single Officer. Their proper performance depends much upon their forming the exclusive duty of that Officer. When, however, he is burdened with the duties of a Deputy Collector, detriment to the public service must inevitably follow whether the individual charged with the united offices considers his magisterial duties subordinate to his revenue duties or *vice versâ*."

It appeared to him that to invest Deputy Magistrates, who ought to be going about their districts, with judicial powers of the kind contemplated by this Bill, was objectionable; and that the objection was not removed by calling them Deputy Collectors.

The Lieutenant-Governor, in answer to the Petition of the British Indian Association, gave the following explanation. He said—

"The measure to which the Committee object has been adopted by the Lieutenant-Governor chiefly with a view to give a better opportunity of redress against wrong to ryots living at a distance from the Sudder Station. The Lieutenant-Governor found it very generally open to objection that a ryot, in contention with his zemindar regarding rent, was obliged to resort, and in many instances taken by force, to a tribunal many miles from his family and friends in the distant Sudder Station, where it was quite easy for his powerful opponent to carry on his case, but next to impossible for the ryot to have any chance of success. And it was frequently represented to the Lieutenant-Governor that the enormous power of the zemindar over the ryot, a power too often exercised, as the Committee of the Association are doubtless aware, with merciless and oppressive rigour, could never be brought under any sufficient check until the summary suits regarding rent, by means of which the

ryot is so liable to suffer injustice, should be heard and determined, not as now at a hopeless distance from the poorest and most helpless parties, but near the ryot's dwelling and in the midst of the people acquainted with the facts of each case."

It was perfectly right that ryots and others living at a distance from the Sudder Station should have an opportunity of bringing their complaints for redress against wrong before tribunals located near to their homes. But the question was, what were these tribunals to be? Were they to be the Moonsiffs' and other Civil Courts, or were they to be Deputy Magistrates called Deputy Collectors and invested with the powers of Deputy Collectors merely for the purpose of trying summary suits relating to rent?

The Lieutenant-Governor proceeded to say:—

"To effect this, it was determined, as an *experiment*, to invest Deputy Magistrates with the powers necessary to enable them to administer summary justice in revenue suits in the manner now objected to by the Committee of the Association.

"These suits are for the most part very simple, and require for their just decision little more than integrity and a reasonable acquaintance with the country and its agricultural population. These qualifications will, the Lieutenant-Governor thinks, be found in the Officers to whom the powers in question have been confided. Further, their decisions are all liable to be revised by the Collector, and are also open to correction, if erroneous, by suit in a Civil Court.

"As an experiment, the measure will be watched with care, in order that any defect which may come to notice may receive immediate correction. And the whole system will be open to amendment if it should be found likely to fail of success. But, up to the present time, the class for whose benefit it was mainly intended has not been found to complain of it; and the objections raised to it have come entirely from the zemindar-class who, though their opinions are entitled to all fair consideration, are, as the Committee must be sensible, not the parties by whom it could be expected that the measure would be in general very warmly approved or supported."

This Bill took away the regular suit for the purpose of getting rid of the decision of the Collector or the Deputy Collector in these cases, and proposed what he (Mr. Peacock) admitted was a much better system—namely, that of giving an appeal at once from the Collector or Deputy Collector to the Judge, instead of the present one of instituting a regular suit to reverse the decision, involving a regular appeal to the Judge, and then a special appeal to the Sudder Court. But still the question remained, in whom was the original summary jurisdiction to be vested; and it appeared to him to be objectionable to vest it in the Deputy Collectors. A Moonsiff had to undergo an examination before he could be appointed to that office; but a Deputy Magistrate, though he was subjected to some examination, was subjected to none which was a test of his ability to determine suits of the kind specified in Section XVII of this Bill.

Then, the Bill contained a provision that suits involving sums under fifty Rupees were not to be appealable; so that the decisions of Deputy Collectors or of Deputy Magistrates called Deputy Collectors were, in such cases, to be final. When he proposed in the Mofussil Small Cause Courts Bill, that the Moonsiffs should have final jurisdiction under the Bill in claims not exceeding fifty Rupees, the Lieutenant-Governor of Bengal objected, saying that the Moonsiffs could not be safely trusted with the jurisdiction. Whatever opinion might be formed upon that subject when the Code of Civil Procedure came to be discussed, he was not satisfied that the Deputy Magistrates or Deputy Collectors were better qualified to be entrusted with final jurisdiction over those cases which must now be brought in the Civil Courts as regular suits and which Section XVII of the Bill proposed to transfer to them, than the Moonsiffs were. It appeared to him that these regular suits ought not to be entrusted to Deputy Magistrates; or, in a round-about way, to Deputy Magistrates to be made Deputy Collectors for that purpose alone. It appeared to him that they should be left to the Civil Courts, not indeed as they existed at present, but as they would be constituted under the new Code of Civil Procedure.

He thought that the time of Deputy Magistrates ought not to be employed in trying summary suits relating to rent, even if they were competent to try them. But even if they were to be appointed Deputy Collectors for that purpose, unless the number of Deputy Magistrates should be greatly increased, ryots and others who might suffer from

oppression and injustice would be driven to a greater distance, in order to obtain relief under the present Bill, than they would be if the Civil Courts were allowed to retain their present jurisdiction.

It was not his intention to oppose the second reading of the Bill in consequence of the views which he held regarding the two points on which he had addressed the Council. He should vote in favor of the second reading; but he wished it to be understood that he did not give his assent to the alteration of the stamp-duties, and to the transfer of jurisdiction which the Bill proposed from the Civil Courts to Deputy Collectors. He did not think that the present Deputy Collectors, even if they were competent, were sufficiently numerous to enable persons to obtain justice under the present Bill without seeking for it at an unreasonable distance. He objected to making Deputy Magistrates Deputy Collectors for the special purpose of trying such suits; and before he could assent to the proposed transfer of jurisdiction, he must know who were to be appointed Deputy Collectors, and how many Deputy Collectors were to be appointed.

MR. CURRIE said, he had to thank the Honorable and learned Member for the encouraging terms in which he had spoken of the Bill generally, and also for his intention to support the Motion for the second reading.

With respect to the two questions upon which the Honorable and learned Member had spoken, he desired to make one or two observations.

The first was the question relating to stamp-duty. The Honorable and learned Member had referred to the course which had been followed with regard to the Code of Civil Procedure sent out by Her Majesty's Commissioners. But the case of this Bill did not appear to him (Mr. Currie) at all similar to that of the Civil Procedure Code. There, it was proposed that the stamp-duties should be abolished altogether. This Bill proposed still to retain a stamp-duty on the institution of suits. It introduced no change of principle, and no very large change in what had heretofore been the practice with respect to suits cognizable by the Revenue Authorities. As remarked by the Honorable and learned Member, the Bill provided that in all cases the plaint should be written upon paper bearing a stamp of eight annas, and that no stamp-duty should be required in any other part of the proceedings. By the present law, as the Honorable and learned Member had also correctly observed, a stamp-duty to the extent of one-fourth the duty leviable on regular suits was chargeable in summary suits instituted before the Collector; but, at the same time, it was left to the discretion of the Collector "to receive a complaint on paper bearing a stamp of eight annas from any independent talookdar, farmer, or ryot, if the complainant was *bonâ fide* unable to pay the amount of the prescribed stamp, or if the Collector should, for other reasons, consider the indulgence proper." In reality, therefore, the Collector might now receive plaints on eight annas stamp paper if he thought proper so to do. Previous to the enactment of the present Law which he had just quoted (Regulation VIII of 1831), for all cases instituted before the Collector the stamp-duty had been eight annas. Regulation XV of 1824 declared that pleadings should be written on paper of that value whatever might be the amount of the suit. So that this Bill, in proposing that the stamp-duty for plaints should be eight annas, was merely reverting to the practice which had existed before 1831.

As to the Bill requiring the plaint alone to be upon stamped paper, and allowing all the other proceedings connected with the suit to be upon plain paper, that was the law at present with respect to suits instituted before Moonsiffs. A very large proportion of the cases which this Bill transferred to the Collectors would, under the existing law, if instituted at all, be instituted before Moonsiffs; and, in that case, except the institution duty, no other stamp duty would be chargeable in respect to them. And in cases instituted before the Collector, it was only the answer, the Vakalutnama, if any, and the decree, which were required to be upon stamped paper: no other proceedings in the course of the suit were subject to any such charge. So that he really did not think that the change proposed to be made by this Bill was a very considerable one. It was not a change of prin-

ciple, and it was not a very extensive change in detail.

He was not prepared to say what the financial result of the change would be. Doubtless there would be some loss to Government; but it was to be remembered that a main object of this measure was the relief of the poor man; and the object of the Legislature should be to make the administration of it as cheap as practicable.

Of course there might be a distinction made with regard to suits instituted by landholders for the recovery of rents, and it might be provided that such suits should be on stamped paper of a value bearing some proportion to the stamp-duty required for regular suits. But, at the same time, it ought to be remembered that suits for the recovery of rent were of a peculiar character. The payment of revenue depended on the recovery of rent; and, therefore, there was every reason why the recovery of rent should be facilitated. By the Bill as it stood, the power of recovery by distraint was very much restricted; and it was desirable that the only mode of recovery left to the Zemindar, that of suit before the Collector, should be made as easy and inexpensive as possible.

For these reasons, it did not appear to him that there was any great reason to object to the course proposed in the Bill. But, at the same time, if the Council were of opinion that it was desirable to know what the financial result would be before the Bill was farther proceeded with, he should urge no objection to the Motion which the Honorable and learned Member had said it was his intention to make after the Bill should have been referred to a Select Committee.

With respect to the second question, the class of Officers before whom the cases in question were to be tried, the Honorable and learned Member had made no objection to the jurisdiction being vested in Collectors. His objection was limited to Deputy Collectors.

MR. PEACOCK remarked that he did object to the transfer to Collectors of some of the suits with respect to which the Bill gave them jurisdiction, and which would now be tried only by the regular Court.

MR. CURRIE said, he at present wished to address himself to the objections which the Honorable and learned Member had taken in regard to Deputy Collectors. He had understood the Honorable and learned Gentleman to say that, generally, the Revenue Authorities might have some special qualifications for the trial of these cases. But he had said, if the cases were to be made over to Deputy Magistrates who were appointed Deputy Collectors merely for the purpose of trying such suits, and not for exercising any other of the functions of Deputy Collectors, he should object to such an arrangement. He (Mr. Currie) was not aware of the ground upon which it was inferred that the Revenue duties of the officers referred to would be so restricted; he apprehended that the object of giving to Deputy Magistrates the powers also of Deputy Collectors was to make them really Deputy Collectors and to employ them in the general duties usually performed by Deputy Collectors in charge of sub-divisions. He (Mr. Currie) himself had not had an opportunity of seeing the Despatch from the Honorable Court of Directors to which the Honorable and learned Member had referred; but if the principle was there laid down that no Native Officer should hold the post of Deputy Magistrate conjointly with that of Deputy Collector, that would, undoubtedly, be a very serious impediment to providing the agency necessary for the efficient working of the Bill. It was to be observed, however, that, throughout those parts of the Provinces where the administration was considered to work most satisfactorily, both fiscal and criminal duties were vested in the same Officer. It was so in the Punjaub, and it was so in the North Western Provinces. And as to the alternative of giving the jurisdiction to the Moonsiffs, he was certain that no one engaged in the administration in those parts would consent, willingly, to give the jurisdiction in cases of the nature referred to, to any other than the Revenue Authorities. The cases were now tried by those Authorities, and it was, he believed, considered necessary that they should be so tried.

THE CHIEF JUSTICE asked if the Tehseeldars were not also Deputy Collectors?

MR. CURRIE replied that they were,

he believed, sometimes, not always Deputy Collectors, and sometimes Deputy Magistrates. They had Police as well as fiscal jurisdiction. The Thannah Darogahs, he thought, were generally subordinate to them.

In the unsettled Provinces, where the Revenue Authorities were constantly occupied in the settlement of estates, and in hearing questions of all kinds between Zemindars and their tenantry, they had very great facilities of obtaining such information as would enable them to dispose satisfactorily of the class of cases for which this Bill provided. The examination of Moonsiffs, to which the Honorable and learned Member had referred, was only a test of the candidate's knowledge of the Laws and Regulations. This knowledge would be of little use in enabling an Officer to determine a suit in which the question at issue might be the rate of rent which a ryot should pay for a particular holding. Even in Bengal, Collectors had considerable facilities for making themselves acquainted with matters of that nature; for lands continually fell into the hands of Government by purchase or escheat or resumption, and settlements were to be made of them; there were also estates settled on temporary engagements which had to be re-settled; and these proceedings brought Collectors acquainted with the rates of rent and the relations between landlords and tenants. For these reasons, he thought that they were more suitable Officers for the trial of these cases than Moonsiffs, and he should be very sorry if any change were made in the Bill on this point. But that, of course, was a matter which the Select Committee, after receiving the opinions which the local Governments, their Officers, and others concerned might send in, would consider and determine.

He did not think it necessary to trouble the Council with any further observations in reply.

The Motion for the second reading was then put and agreed to, and the Bill read a second time.

The Council adjourned.

Saturday, November 7, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	D. Eliott, Esq.
Hon. Major General J. Low,	P. W. LeGeyt, Esq., and
Hon. B. Peacock,	E. Currie, Esq.,

KURNOOL (MADRAS PRESIDENCY).

THE CLERK reported to the Council that he had received a communication from the Government of Madras relative to the passing of an Act for the repeal of Act X of 1843 and the formation of Kurnool into a Zillah and Collectorate.

PORT-DUES (GULF OF CAMBAY).

MR. LEGEYT presented a Report by the Select Committee on the Bill "for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay."

Mr. LeGeyt moved that the above Report be printed.

Agreed to.

PORT-DUES (KURRACHEE).

MR. LEGEYT also presented the Report of the Select Committee on the Bill "for the levy of Port-dues and fees in the Port of Kurrachee."

PORT-DUES (ADEN).

MR. LEGEYT moved the second reading of the Bill "for the levy of Port-dues in the Port of Aden."

The Motion was carried, and the Bill read a second time.

GANJA (BOMBAY).

MR. LEGEYT moved that the Council do resolve itself into a Committee on the Bill "relating to the sale of Ganja in the Presidency of Bombay;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment.

The Council having resumed its sitting, the Bill was reported.

FOREIGNERS.

MR. PEACOCK moved that the Standing Orders be suspended to enable him to move that a Bill "to make further provision relating to Foreigners" be now read a first and second time and referred to a Select Committee.

General Low seconded the motion, which was then agreed to.

MR. PEACOCK said, circumstances had lately come to the knowledge of Government which rendered it necessary that the law respecting the removal of Foreigners from India should be perfectly clear and effectual for that purpose. The law on this subject was contained in the Statute of 55 Geo. III, c. 84, Sections VI and VII. He believed that Statute to be still in force; and in the case of Ouseley *versus* Plowden the Supreme Court intimated that the decision was consistent with the provisions of 3 and 4 Wm. 4. c. 85, s. 81, and that it was not repealed by that Statute.

Section VI, after reciting that it was expedient that the several Governments in the East Indies should be enabled to prevent subjects of Foreign States from residing or sojourning within the British Territories there against the consent of such Governments respectively, enacted as follows:—

"It shall and may be lawful to and for the Governor-General in Council, and to and for the Governor in Council or Chief Officer for the time being of any Presidency, or of any place not being subordinate to any Presidency under the Government of the United Company of Merchants of England trading to the East-Indies, to cause notice in writing to be given to any person, not being a native of any part of the British territories in India or within the limits of the Charter of the said United Company, other than such natural-born subjects of his Majesty, as may from time to time lawfully resort to or reside in the East Indies, to remove himself or herself from such Presidency, or from all or any part of the British territories in the East Indies, as may be deemed expedient, within a time to be limited by such notice; and in case any such person shall not obey such notice, then it shall and may be lawful to and for the Governor-General in Council, or Governor in Council, or other Chief Officer (as the case may be) of the place where such person shall be found, to cause such person to be apprehended and brought before the Court of Civil or Criminal Judicature, to the jurisdiction whereof such place may be subject; and upon proof being made upon oath, to the satisfaction of such Court, by any credible witness swearing to his knowledge or belief, stating the ground of such belief, that such person is an alien and the subject of a Foreign State, and that such notice as aforesaid has been served on such person, either personally or by leaving the same at his dwelling-house, unless such person shall prove that he is a natural-born subject of his Majesty authorized to reside in India, or a native of the British territories in India, or within the limits of the Charter of the Company, for the making which proof reasonable time and opportunity shall be allowed by the said Court, such person shall be remanded by the said Court into the custody of the Governor-General, Governor, or Chief Officer, who shall, as soon as may be, cause such person to be removed in such manner as his or her rank, state, and condition in life shall require, by the first convenient opportunity, to the country or place to which he or she shall belong, if he or she shall be willing to go thereto, or otherwise to such country or place as the Governor-General, Governor, or Officer by whose authority he or she shall have been apprehended, or shall be detained, shall be of opinion shall be most proper, regard being had to the convenience of the person to be removed, and the peace and security of the British territories in the East Indies, and of the allies of his Majesty and the East India Company, and of any neighbouring Princes or States; and in the mean time and until such person can be conveniently and properly removed, it shall and may be lawful to detain him or her in such custody or under such guard as the person by whose authority he or she shall have been apprehended or shall be detained shall see fit and necessary, so as that the person detained may be put to as little inconvenience as shall be consistent with the object of his or her detention; and in case any such person, having removed him or herself in pursuance of any such notice, or having been so removed, shall again wilfully return to any country or place from which he or she shall have had notice to remove, without the consent of the Government or Chief Officer of the place to which he or she shall so return, it shall and may be lawful to and for the Governor-General in Council, or Governor in Council, or Chief Officer of the place where such person shall be found, to cause such person to be apprehended and detained in safe custody, until he or she shall be discharged out of custody, upon such terms and conditions as the Governor-General in Council, Governor in Council, or other Chief Officer at the place where he or she shall be detained, shall deem sufficient for the peace and security of the British territories, and of the allies of his Majesty and of the East India Company and of the neighbouring Princes and States."

Section VII went on to say that—

"It shall be lawful to carry into execution any warrant or authority for the apprehension, detention, or removal of any such person or persons as aforesaid, notwithstanding he, she,

or they may be in custody, or delivered to bail, or in execution on any civil process, and notwithstanding any license, privilege, or protection whatsoever, any law, statute, or usage to the contrary notwithstanding: provided always, that no British subject, nor any native of the British territories in India, or within the limits of the Charter of the said Company, shall be apprehended, detained, or removed, by virtue of any of the provisions herein contained, nor shall any thing herein contained in any wise alter or affect any law or statute under or by virtue of which any British subject may resort to or is restrained from resorting to the East Indies: provided also, that it shall not be lawful to apprehend, detain, or remove any person being the subject of any Foreign State, under or by virtue of this Act, in any way inconsistent with any treaty made or to be made by his Majesty or the East India Company, and to the benefit of which such person shall be entitled."

Subsequently by the late Charter Act, 3 and 4 William IV. c. 85, s. 81, it was enacted that—

"It shall be lawful for any natural-born subjects of his Majesty to proceed by sea to any port or place having a Custom-house establishment within the said territories, and to reside thereat, or to proceed to and reside in or pass through any part of such of the said territories as were under the Government of the said Company on the first day of January one thousand eight hundred, and in any part of the countries ceded by the Nabob of the Carnatic, of the province of Cuttack, and of the Settlements of Singapore and Malacca, without any license whatever; provided that all subjects of his Majesty not natives of the said territories, shall on their arrival in any part of the said territories from any port or place not within the said territories make known in writing their names, places of destination, and objects of pursuit in India, to the Chief Officer of the Customs, or other Officer authorized for that purpose, at such port or place as aforesaid."

There was no law requiring a Foreigner to do what this Section required from every British subject. The Section gave British subjects a right to reside in or pass through any part of the territories under the Government of the East India Company with the exception of certain parts of the territories specified in the Section: but no such right was conferred on Foreigners.

It was probably for that reason that it was not considered necessary to impose upon Foreigners similar obligations to those which were provided in regard to British subjects. He believed that in practice the provisions of the Act were not observed by British subjects. But still the law required every British subject to report his arrival, and to make known his name, place of destination, and objects of pursuit in India; and he (Mr. Peacock) thought it would be no hardship to require a Foreigner to do what that Section required of British subjects. Government might, under the 6th Section of the Statute of 55 Geo. III, give notice to any Foreigner to remove himself from the territories of the East India Company. But there was no provision which required a Foreigner to give notice of his arrival or to make known his objects of pursuit; and there would be great difficulty in dealing with Foreigners who might be found travelling in or passing through India. It seemed doubtful whether or not a Magistrate had a right to apprehend such persons, unless they refused to remove themselves after notice in writing. Nor did it appear clear that a Foreigner could be compelled to remove himself in any particular direction; he might, therefore, if he pleased, upon receiving such notice to remove himself out of the British territories, pass into a Native State with intentions hostile to the British Government.

It appeared to him that a Magistrate ought to have power to apprehend or place under surveillance a Foreigner who might be found travelling in or passing through the British territories in India without a license, and either to send him to one of the Presidency Towns or detain him until the orders of Government were known.

The Bill enacted that every Foreigner should, upon his arrival in India, report himself and make known the nation to which he belongs and his objects of pursuit in India. It further enacted that no Foreigner should travel in or pass through the British territories in India without a license from the Secretary to Government in the Foreign Department or from certain other Officers specified in the Bill. It also enabled the Government to remove any Foreigner, or to detain him in custody, if he should neglect to remove himself by such route as the Government may direct; and if a Foreigner should be found travelling in or passing through India without a license, the Bill would enable him to be apprehended and sent to the Presidency Town, or to be detained un-

til the orders of Government were received. This of course was to be done in such a manner as to put him to as little inconvenience as possible. These were the principal alterations in the law which he proposed to make by the Bill.

In addition, however, to these provisions, he proposed to compel Masters of vessels to give notice of the names of their passengers; and the Bill authorized the Commissioner of Police or a Magistrate, upon the arrival of a vessel, to enter the same and to make such enquiries, either by himself or by an Officer of Police specially authorized, as might be necessary for the purpose of ascertaining whether any and what passengers were on board.

The word "Foreigner" was defined to mean a person not being a natural-born subject of Her Majesty or a native of a place within the limits of the Charter of the East India Company.

The Act was not to extend to the Straits nor to Aden, unless Government should make it applicable to those places.

The law was to continue in force for two years.

With these remarks he begged to move that the Bill be read a first time.

The Bill was read a first time.

MR PEACOCK moved that the Bill be read a second time. In doing so, he said that he did not wish to bind any Member, who might give his assent to the motion for the second reading, to the principle of the Bill.

THE CHIEF JUSTICE said that no Member need fear committing himself to the principle of the Bill by assenting to the motion for its second reading, as the Bill would be considered when it came before a Committee of the whole Council. For his own part, he had no objection whatever to the second reading of the Bill. The Standing Orders having been suspended, it was immaterial whether the second reading was now moved or not.

Ultimately, the motion for the second reading was not put.

MR. PEACOCK moved that the Bill be referred to a Select Committee consisting of the Chief Justice, Mr. Elliot, Mr. LeGeyt, Mr. Currie, and the Mover.

Agreed to.

Mr. Peacock

NOTICES OF MOTIONS.

MR. CURRIE gave notice that he would, on Saturday the 14th instant, move the second reading of the Bill "for the amendment of the law relating to Merchant Seamen."

MR. CURRIE also gave notice that he would, in the same day, move the first reading of the following Bills, namely,

A Bill relating to Lunatic Asylums;

A Bill to regulate proceedings in Lunacy in Her Majesty's Courts of Judicature;

And a Bill to make better provision for the care of the estates of Lunatics not subject to the jurisdiction of Her Majesty's Courts of Judicature.

The Council adjourned.

Saturday, November 14, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.
Hon. Major General J. Low,	E. Currie, Esq., and
Hon. B. Peacock,	Hon Sir A. W. Buller,
D. Eliott, Esq.	

PORT-DUES (MADRAS PRESIDENCY).

THE CLERK reported to the Council that he had received by transfer from the Under-Secretary to the Government of India in the Home Department a communication from the Madras Government regarding the levy of Port-dues under that Presidency.

MR. ELIOTT moved that the above communication be printed.

Agreed to.

FOREIGNERS.

MR. PEACOCK presented the Report of the Select Committee on the Bill "to make further provision relating to Foreigners."

LUNATICS.

MR. CURRIE said, some eighteen or twenty months ago, a question arose as

to the right of the Superintendent of a Lunatic Asylum in this country to detain in such Asylum persons alleged to be Lunatics. The circumstances were these. One of the Calcutta Attorneys applied to Dr. Cantor, Superintendent of the Bhowanipore Lunatic Asylum, to know upon whose authority a certain Lunatic had been committed to his charge, and by whom he was still detained in the Asylum. Dr. Cantor seemed to have apprehended that legal proceedings might be instituted against him, and the correspondence was referred to the Bengal Government. A copy of it was communicated to him by order of the Lieutenant-Governor with an intimation that the Lieutenant-Governor had "been led to doubt the sufficiency of the existing law in regard to the detention in the Lunatic Asylums of the Presidency of Insane persons not being criminals as well British subjects as others," and that "at all events some steps appear to be necessary towards obtaining a law sanctioning the legal detention of Insanes, British subjects, in the Bhowanipore and other Asylums."

He (Mr. Currie) had communicated on the subject with the Advocate General, and had understood his opinion to be (as indeed Mr. Ritchie had since expressed it in writing) that, with respect to natives and persons not subject to the jurisdiction of the Supreme Court, the Executive Government had the same kind of authority for the protection of the person of a Lunatic, as the Crown in England had by virtue of its prerogative before the restrictions upon it were imposed by Parliament; and that the detention of any such Lunatic in an Asylum under the authority of Government would be perfectly legal, if unsoundness of mind really existed.

Mr. Ritchie also said (MR. CURRIE would quote from the opinion subsequently given by him in writing) that

"both as to persons subject and persons not subject to the Supreme Court jurisdiction, any private individual would be justified, without the sanction either of the Court or of the Government, provided no order has been previously made or proceedings had, providing otherwise for the guardianship or care of the person, in confining or restraining a person who is really a Lunatic and unable to take care of himself, whenever it is necessary for the protection of such person or of others that he should be so confined or restrained. Therefore, in the case referred to, any prosecution would have been defeated, I think, on proof that he (the Lunatic) really was of unsound mind and incapable of taking care of himself, and that restraint in such an Asylum was really necessary for the safety of himself or others; and upon proof of those facts, the Court would, I think, have refused to discharge him on *habeas corpus*, whether he was a British subject or a resident of Calcutta or not."

It appeared therefore that, although it might be desirable that the law should be more distinctly defined, and that the Government and Superintendents of Asylums should be exempted from the possibility of being called upon to prove the unsoundness of mind of any person confined in a Lunatic Asylum, yet the chance of any practical inconvenience resulting from the state of the law in respect to the matter referred to was very remote and did not particularly press for consideration. Mr. Ritchie, however, was of opinion that a general revision of the law relating to Lunatics (with the view especially of introducing into Her Majesty's Courts in this country, some of the improvements in the proceedings relating to Lunacy which had been adopted in England under recent Acts of Parliament) was very desirable.

The question in this more general form had been recently brought under the consideration of the Bengal Government, and had been referred to him by its orders He had therefore thought it advisable to endeavor to frame a complete set of Lunacy Laws applicable both to Europeans and Natives, and to all the territories under the Government of the East India Company; and he had accordingly prepared the three Bills of which he gave notice last Saturday.

The first, on which he was now addressing the Council, had for its object to provide by law for the reception and detention of Insanes in Lunatic Asylums. The provisions were based in part upon some of the provisions of the English Lunatic Asylums Act 1853.

The Bill provided for the superintendence and inspection of such Asylums, for the admission into them of vagrant and dangerous Lunatics under the orders of the Magistrate, and also for the reception of other Lunatics on application of the friends of the Lunatic accompanied by proper certificates.

There were also provisions for the recovery of the expenses incurred on the Lunatics' account in all cases where they were possessed of sufficient means; and there were some rules for the discharge of Lunatics, either on recovery, or on the application of their friends.

With these remarks he begged to move that the Bill "relating to Lunatic Asylums" be now read a first time.

The Bill was read a first time.

MR. CURRIE moved that a Bill "to regulate proceedings in Lunacy in Her Majesty's Courts of Judicature" be now read a first time. He said, the object of this Bill was to assimilate the proceedings in Lunacy in Her Majesty's Courts of Judicature in this country to those which now obtained in England under recent Acts of Parliament.

He should not have ventured on a subject of this kind, dealing as it did entirely with matters of English law and the practice of Her Majesty's Courts, had not the Advocate General, in the opinion furnished to him by the Bengal Government, indicated the course of procedure which it would be expedient to adopt and the particular portions of the English Lunacy Regulation Act which might be advantageously imported into a local law; and had he not also had the assistance of the learned Clerk of the Council in putting those suggestions into a practical shape.

Mr. Ritchie said—

"With respect to British-born subjects or their legitimate children, I think it desirable that, in any reform of the law, the general course of recent legislation in England, as to the mode of establishing the Lunacy, appointing a guardian or Committee, and managing or administering the property, should be followed. This seems advisable with reference to the Statute 14 and 15 Vic: c. 87 which provides that such proceedings in the Supreme Courts shall have the same effect in the United Kingdom when transmitted there as if they had taken place there. The formal part of the procedure introduced by the English Acts would require alteration; and the rest of the provisions respecting Lunatic Asylums &c. would be quite unnecessary in this country; but the main provisions of the Lunacy Regulation Act 1853 as to the inquisition (Sections XXXVIII to LIV); the proceedings after inquisition (Sections LV to XCVII); the management and administration of the estate (Sections CVIII to CXXIX) omitting the rules regarding property not usually held in this country (Sections CXXXIV to CXLVI); as to the traverse (Sections CXLVIII to CLI); and supersedeas (Section CLII) might, I think, be usefully introduced. The powers there conferred on the Lord Chancellor might be exercised by the Supreme Court, and those given to a Master in Lunacy by a Judge at Chambers."

In accordance with Mr. Ritchie's suggestions, the Bill gave to the Supreme Court the powers conferred by the Act on the Lord Chancellor, and to the Master or to a Judge of the Court the powers conferred by the Act on Masters in Lunacy. The provisions of the English Act indicated by Mr. Ritchie, abridged and modified so as to be applicable to the circumstances of this country, had been introduced into the Bill. The Bill, as now presented, had been examined by the Advocate General and had been generally approved by him.

The Bill was read a first time.

MR CURRIE moved that a Bill "to make better provision for the care of the Estates of Lunatics not subject to the jurisdiction of Her Majesty's Courts of Judicature" be now read a first time. He said, this Bill was intended to complete the series of laws relating to Lunatics. It provided for the care of the property of Lunatics not subject to the jurisdiction of Her Majesty's Courts of Judicature, as the second Bill of the series provided for the care of the property of persons subject to that jurisdiction.

The present law on the subject was very imperfect and insufficient. The Bombay law merely made provision for the appointment of an Administrator when the heir of a deceased person was incompetent to the management of his affairs from insanity or other cause, and there was no near relative entitled and willing to take charge of the estate—and the law of Bengal and Madras authorized interference only when the property was of a nature which might be brought under the jurisdiction of the Court of Wards, or, as in Bombay, when property devolved by inheritance to a person who was incompetent to the management of it. In Bengal, indeed, it was only in the case of a particular description of landed property that the Court could interfere. The procedure too by which, under the law in force in Bengal and Madras, the fact of unsoundness of mind was to be ascertained, was cumbrous and unsuitable; while, in the Bombay Code, no provision at all was, he believed, made for such enquiry.

The present Bill proposed to remedy these defects. It prescribed an easy mode of determining the fact of Lunacy —it provided for the appointment of a manager of the Lunatic's Estate, and contained rules according to which the management was to be conducted. The general scope and tenor of the Bill corresponded with that for the regulation of proceedings in Lunacy in Her Majesty's Courts.

He should mention that a Bill (which he introduced several months ago) "for making better provision for the care of the persons and property of Minors, Lunatics, and other disqualified persons in the Presidency of Fort William in Bengal" would secure for Lunatics in that Presidency all that was provided in this Bill. But, in dealing with the general question of Lunacy, it seemed to him to be far preferable to have a Mofussil Law corresponding with the Supreme Court's Law applicable to all the Presidencies; and if this Bill should be read a second time, all that part of the former Bill which related to Lunatics could be struck out by the Select Committee on that Bill.

The Bill was read a first time.

MERCHANT SEAMEN.

MR. CURRIE postponed the motion (of which he had given notice for this day) for the second reading of the Bill "for the amendment of the Law relating to Merchant Seamen."

PORT-DUES (GULF OF CAMBAY).

MR. LEGEYT moved that the special Report of the Select Committee on the Bill "for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay" be adopted. In doing so, he said that the Report had been presented to the Council at the last Meeting, and ordered to be printed. If the Report were adopted by the Council, further proceedings on the Bill would be suspended until the receipt of a communication on the subject from the Bombay Government.

MR. PEACOCK said, although the Report had been circulated, he was not aware that the Honorable Member intended to move to-day that it should be adopted. The question had entirely escaped his attention. He must confess that he had not read the Report, which he would have done if he had been aware of the Honorable Member's intention. It would be a great convenience to him if the Honorable Member would allow the motion to stand over until next Saturday.

The Motion was accordingly, by leave, postponed.

MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYT moved that a communication received by him from the Government of Bombay be laid upon the table and referred to the Select Committee on the Bill "for appointing Municipal Commissioners and for raising a fund for Municipal purposes in the Town of Bombay."

Agreed to.

RECOVERY OF RENTS (BENGAL).

MR. CURRIE moved that the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal" be referred to a Select Committee consisting of Mr. Peacock, Mr. Eliott, and the Mover.

Agreed to.

FOREIGNERS.

MR. PEACOCK moved that the Bill "to make further provision relating to Foreigners" be published for general information.

Agreed to.

ARTICLES OF WAR (NATIVE ARMY).

MR. PEACOCK moved that the Standing Orders be suspended to enable him to introduce a Bill "to amend the Articles of War for the Native Army."

GENERAL LOW seconded the motion, which was then agreed to.

MR. PEACOCK said, upon a recent trial of a Sepoy in the Bombay Presidency for desertion, he was sentenced by the Court Martial, by which he was tried, to two years hard labor and to be marked with the letter D as a Deserter. But the Commander-in-Chief there, on the proceedings coming before him, expressed his opinion that the Court Martial had no power to order the prisoner to be marked. He (Mr.

Peacock) had looked carefully through the Articles of War for the Native Army, but they contained no provision on the subject. The Mutiny Act for the European Forces in the Queen's and Company's Services, which provided for it, enacted as follows :—

"On the first and on every subsequent conviction of Desertion, the Court Martial, after awarding such punishment as it may think fit, may order the offender to be marked on the left side two inches below the arm-pit, with the letter D; such letter not to be less than an inch long, and to be marked upon the skin with some ink or gunpowder, or other preparation, so as to be visible and conspicuous and not liable to be obliterated."

It had been thought desirable, in the present state of the Native Army, that some provision of this sort should be extended to the Native Army. The Government of India were of opinion, however, that the power of ordering Mutineers and Deserters to be marked should not be vested in Courts Martial, but in the Governor-General in Council and in the Executive Governments. He had accordingly prepared a Bill to that effect, and proposed to move now that it be read a first and second time and referred to a Select Committee.

The Bill empowered the Government to order a person convicted of Mutiny to be marked on the left side two inches below the arm-pit with the letter M, and a person convicted of Desertion with the letter D, together with such other marks as the Government might consider necessary for the purpose of identifying the offender at any future time, or of denoting the punishment to which he had been sentenced.

This would prevent them from ever being re-enlisted; and, in the event of their being sentenced to transportation, would enable them to be identified in case they should escape and return to this country.

The Bill provided that the letter should not be less than one inch long, and that such letter and other mark should be made upon the skin with ink, gunpowder, or other preparation, so as to be visible and conspicuous and not liable to be obliterated.

With these remarks, he begged to move that the Bill be now read a first time.

The motion was agreed to, and the Bill read a first time.

MR. PEACOCK moved that the Bill be now read a second time.

THE CHIEF JUSTICE said, the Bill seemed to provide for the branding of Mutineers and Deserters from the Native Army, and that this should be done by order of the Government. But he would ask whether the sentences of Courts Martial necessarily went up to the Government, or (as he had understood it to be) only to the Commander-in-Chief for confirmation? If the latter, how could the Government know anything about the cases of those offenders who were to become liable to be marked?

GENERAL LOW replied, there were several kinds of sentences by Courts Martial which required the confirmation of Government; and he saw no objection to making a similar provision for the cases in question.

MR. CURRIE said that the Executive Government having the control of the Jails, orders of this kind would properly be left to it.

MR. LEGEYT said that, as in the case of European Deserters Courts Martial could now sentence them to be branded, which sentence was carried out when confirmed by the Officer by whom the Court Martial was convened, he did not see why in such a matter any difference should be made between the Sepoy and the European Soldier; and he thought that the law should be amended so as to allow Courts Martial to order branding for Mutiny and Desertion, subject to the authority who would necessarily confirm the sentence.

THE VICE-PRESIDENT said that one reason for giving the power to Government only, in the case of Sepoys, was that, by certain Acts recently passed by the Legislative Council, the Civil Authorities were empowered to try Sepoy offenders. He did not know, however, that there was any good reason why Courts Martial should not also have the power of ordering Sepoys to be marked.

THE CHIEF JUSTICE did not object to the exercise of such powers by the Executive Governments. But he thought that a concurrent power should be given to Courts Martial, so as to place the Native Soldier on the same footing as the European in this respect.

MR. PEACOCK said, the great ob-

ject was that, in respect to a very numerous class of offenders, one uniform course should be adopted. He would have no objection to give Courts Martial the power of ordering Sepoy Mutineers and Deserters to be marked, were it not that, by giving the power to Government alone, the system would be uniform. If the power were given to Courts Martial, one Court Martial might be against marking an offender, while another might be in favor of marking for the same offence committed under similar circumstances. As to the objection of the Honorable and learned Chief Justice regarding sentences of Courts Martial not coming necessarily before Government, he thought a sufficient answer had been given by the Honorable Member for Bengal in saying that Government had control of the Jails in which prisoners, who were sentenced to imprisonment, were confined; and in cases where they were sentenced to transportation it rested with the Government to carry the sentence into execution. Again, as the Honorable Vice-President had remarked, Sessions Judges and Special Commissioners had now power to try for Mutiny and Desertion, and their decisions would not come before the Commander-in-Chief. Upon the whole, he thought the power would be best vested in the Government. However, he did not propose to proceed with the Bill until next Saturday; and in the meantime the question now raised might undergo the consideration of the Select Committee to whom he proposed to refer the Bill.

The Bill was then read a second time; and, on the motion of MR. PEACOCK, referred to a Select Committee consisting of the Chief Justice, General Low, Mr. LeGeyt, and the Mover.

GENERAL LOW then moved that the Bill be printed for general information.

Agreed to.

FOREIGNERS.

MR. PEACOCK gave notice that he would, on Saturday the 21st instant, proceed with the Bill "to make further provision relating to Foreigners."

The Council adjourned.

Saturday, November 21, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,
Hon. Major General J. Low,
Hon. B Peacock,
D. Eliott, Esq.,
P. W. LeGeyt, Esq.,
E. Currie, Esq.,
and
Hon. Sir A. W. Buller.

LIQUOR LICENSES (BOMBAY).

THE CLERK presented to the Council a Petition of retail Liquor Sellers at Bombay against the sale by public auction of licenses for the retail sale of liquor.

MR. LEGEYT moved that the above Petition be referred to the Select Committee on the Bill "for appointing Municipal Commissioners and for raising a fund for Municipal purposes in the town of Bombay."

Agreed to.

CRIMINAL PROCEDURE.

THE CLERK reported to the Council that he had received from the Under-Secretary to the Government of India in the Home Department, a copy of the following Despatch from the Court of Directors to the Government of India:—

"1. By our Legislative Despatch No. 2 dated 4th February 1853, we authorized you, 'if you should see fit, to proceed to pass a Law for giving effect to the Penal Code, as it may be finally arranged by you, with the concurrence of Mr. Peacock.'

2nd. By our Judicial Despatch No. 40 dated 10th September 1856, we also authorized you to bring before the Legislative Council, without reference to us, a measure for giving effect to the recommendations of the Indian Law Commissioners in regard to Procedure, with such alterations and modifications as you might consider necessary with a view to their adaptation to the Courts of the East India Company.

3rd. We observe, from the proceedings of the Legislative Council recently received, that the Penal Code and Codes of Procedure are now under their consideration.

4th. According to the Penal Code, the punishment for murder is death; and by the 8th Rule at page 96 of the First Report of the Law Commissioners, it is provided that 'no person whatever shall, by reason of descent, be in any criminal proceeding whatever excepted from the jurisdiction of any of the Criminal Courts.'

5th. Should these provisions be enacted as they now stand in the proposed Codes, their effect will be to render natural-born subjects of Her Majesty subject in capital as in all other cases to the jurisdiction of the Courts of the East India Company.

6th. To enact such a law, however, would be beyond the power of the Governor-General in Council, without the previous sanction of the Court of Directors. The sanction already given in general terms to pass the Codes, we consider to be insufficient to meet the specific conditions of the law in regard to the infliction of capital punishment upon British subjects; and the object of our present Despatch is to supply the omission in our former Despatches, by suggesting that the Clause giving jurisdiction to the Mofussil Courts over British subjects should be followed by a Proviso to the effect that such persons, when charged with capital crimes, shall be tried as heretofore by Her Majesty's Supreme Courts of Judicature. Considering, however, the great importance of the question of making British subjects amenable to the jurisdiction of the Mofussil Courts in criminal matters, and the interest it has already excited in this country as well as in India, we think that legislation upon that point had better be postponed, until the question has been referred to us (accompanied by a statement of your views in regard to it) and a measure for carrying that object into effect has received our approbation. The reference, however, need not delay the passing of the much needed legislative measures for the improvement of the existing Procedure of the Civil and Criminal Courts."

3 and 4 Wm. IV, c. 85, s. 46.

MR. PEACOCK moved that the above Despatch be referred to the Select Committees on the Bills regarding Criminal Procedure.

Agreed to.

ARTICLES OF WAR (NATIVE ARMY).

MR. PEACOCK presented the Report of the Select Committee on the Bill "to amend the Articles of War for the Native Army."

MERCHANT SEAMEN.

MR. CURRIE moved that the Bill "for the amendment of the law relating to Merchant Seamen" be now read a second time.

The motion was carried, and the Bill read a second time.

FOREIGNERS.

MR. PEACOCK moved that the Council do resolve itself into a Committee upon the Bill "to make further provision relating to Foreigners"; and that the Committee be instructed to consider it in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to III were passed as they stood.

MR. LEGEYT rose to propose for the consideration of the Council the introduction of two new Sections after Section III. The first of these Sections provided as follows:—

"The Governor-General in Council, or the Executive Government of any Presidency or place, or any of the Chief Commissioners or Commissioners mentioned in Section VI of this Act, may require any Foreigner, at the time of reporting himself as required by the preceding Sections, to produce and deliver to the Commissioner or other Officer appointed to receive such report a passport, or to give a reference to one or more respectable person or persons residing at or near the place of his arrival. Every Foreigner, residing or being at the time of the passing of this Act in any part of the said Territories, shall in like manner furnish the said Commissioner or other Officer with a reference to one or more respectable person or persons residing at or near the place of his residence. If the said Commissioner or other Officer shall, after due enquiry, be satisfied that such Foreigner is a fit person to reside in India, he shall grant him a license to reside."

The next Section was as follows:—

"Every such license shall state the name of the person to whom it is granted, the nation to which he belongs, the district or limits within which he is authorized to reside or to be. Such license shall authorize the person, to whom it is granted, to remain or to be in or to pass through any place situate within such district or limits."

He said that, since the Bill had been drawn up, it had been suggested to him (and he believed the suggestion was well founded) that, without some such provisions as those he now proposed for consideration, the Bill would not be found effective or useful. The Bill, as it stood, simply required a Foreigner to report himself on arrival, and, if he wished to travel, to obtain a license for that purpose, without being obliged to give a guarantee from any-one that he was a fit or proper person to reside or travel in India. Since the Bill had been introduced, its scope had been widely extended, and its character had been materially altered. The Bill, as amended by the Select Committee to whom it

had been referred, included under the denomination of Foreigners, with the exception of the natural-born subjects of the Queen, all persons not being the natives of any place in the possession and under the Government of the East India Company. But it appeared to him that the Bill, in order to be quite complete, should require from all persons liable to come under its operation a guarantee of their fitness to remain or travel in the country. He thought that such a measure would not be felt as a hardship. By travelling Asiatics, the possession of a passport was considered a proof of respectability and a privilege. Foreigners would have to pay nothing for their passports; and all that the Sections proposed by him required of them was to give some test of their respectability, and that they were fitting persons to remain in India. Such a provision would be very advantageous as a Police measure, since it would be of great assistance to the Police in giving them a knowledge of many persons located in different parts of India, of whom at present much too little was known. He would not take up the time of the Council to show the material importance that the proposed measure would prove to the Police. It was well known that Persians, Arabians, and people from beyond Affghanistan and the neighbouring countries, were in the habit of immigrating in large numbers annually, and of passing through different districts of British India, causing considerable trouble and uneasiness in their route; but there was at present no law which could prevent their doing so. With respect to the Western Coast of India, particularly those districts bordering on the Nizam's Dominions, great inconvenience had been felt. In Central India, also, large bodies of people, known by the name of "Welayutees," wandered about the country armed and mounted on horses; and only within the last month some of these people had seized a small Town in the neighbourhood of Indore, and had to be dislodged by our Troops after a severe action. This Act would touch all the evils arising from such extended and vagrant immigration.

He (Mr. LeGeyt) recollected that, some six or seven years ago, a large body of persons calling themselves Persians and numbering about six hundred men, were travelling about the Deccan. They reported themselves as travellers, and there was no law in existence which could touch them. They were upwards of a year going from place to place between Mysore and the Nerbudda river, and caused considerable excitement at the different places which they visited.

He then proceeded to remark that the proposed rules regarding licenses to reside would in fact be rather a convenience to resident Foreigners than otherwise, for, under the existing provisions of the Bill, no such resident could leave the place of his abode without taking out a special license or being liable to obstruction from the want of it.

With these observations, he moved that the first of the two new Sections proposed by him for consideration be introduced after Section III.

MR. CURRIE said that the wording of the proposed Section, which was less stringent in respect of new comers than of old residents who might by such residence be said to have in a measure established their respectability, would require considerable alteration, even if the principle were adopted, with respect to which also he confessed he had great doubts. The Section did not indicate the sort of pass that was required. But he much doubted the efficacy or desirableness of any passport-system. What appeared to him to be really required was a summary power of deportation, which the Bill already gave. This seemed to him to be the really useful power; and he thought that the Bill, as it at present stood, Section XIII of which gave full powers of deportation to the Government, would provide a remedy for all the evils of which the Honorable Member for Bombay complained.

THE CHIEF JUSTICE said, he had great doubts as to the principle of both the Sections proposed by the Honorable Member for Bombay. He thought in the first place that it was not desirable to make the Act more stringent than was required for the object contemplated by the introduction of the Bill. He had not given his mind to the case of the wandering hordes referred to by the Honorable Member. If the present law should be found insufficient to check the invasion of India by such persons, whether Arabs or Pathans or whatever

else they might be, he would rather like to have that provided for specially. But in legislating on such a matter as that now before the Council, it was necessary to avoid any restriction not absolutely requisite, and especially to avoid anything invidious towards the subjects of friendly Foreign European States to whom the Sections in question more particularly applied. He was in favor of legislating on the subject to the extent only to which the Select Committee had gone. When a Foreigner arrived here, he might give the information required by Section II. But he might not have a passport or might not be able to give a reference to two persons willing to come forward to vouch for his respectability. The inconvenience which attended the passport-system was patent to all who travelled on the Continent of Europe; and its introduction into this country might give offence unnecessarily. The possession of a passport was but a poor criterion of the character of the person who produced it. He believed that Polish, German, or other military adventurers would have little difficulty in furnishing themselves with passports.

As to the other Section or the other Clause of the Section, he entertained still stronger objections. It would oblige every Foreigner to take out a license to reside in a place where he was already resident or perhaps carrying on business; and he (the Chief Justice) did not see the necessity for such a provision.

MR PEACOCK said, he agreed with what had fallen from the Honorable Member for Bengal and the Honorable and learned Chief Justice. He thought the proposed Section to be quite unnecessary. If the Government had the power of deportation, that was all that was required. If the provision proposed for consideration by the Honorable Member for Bombay was unnecessary, as the Honorable and learned Chief Justice had shown it to be, he thought it was objectionable and would cause much inconvenience. Take the Arabs for instance. If every one of these Foreigners were to come before a Magistrate or other Officer for a license to reside in India, it would, in his opinion, be highly inconvenient both to the officials and to the people to whom the proposed amendment applied. Under these circumstances, as the first portion of the Section in question appeared to him unnecessary, and the second portion objectionable, he would vote against its introduction.

THE CHAIRMAN was also opposed to the principle of the proposed Section, and thought that the Bill went quite far enough for the purposes required. He said that, from information which had been received by Government and which led to the introduction of the present Bill, it appeared that the passport-system would have no value whatever.

The Section was then put and negatived.

Sections IV to VI were passed as they stood.

Section VII prescribed the form of license to be taken out by a Foreigner to enable him to travel in or pass through any part of British India. It provided as follows:—

"Every such license shall state the name or names of the person to whom the license is granted, the nation to which he belongs, the district or districts through which he is authorized to pass, or the limits within which he is authorized to travel."

MR. PEACOCK said, the Honorable Member for Madras had suggested to him that licenses might be granted to Foreigners for particular periods. It appeared to him (Mr. Peacock) that this was already provided for; but to make it clear, he proposed that the following words be added to the Section:—

"and the period, if any, during which the license is intended to have effect."

Agreed to.

Sections VIII and IX were passed as they stood.

Section X prescribed the procedure upon apprehension by persons not being Magistrates or Police Officers.

MR. PEACOCK pointed out an inaccuracy in this Section. He said, it only provided for cases of apprehension "by a person not being a Magistrate, Deputy Magistrate, or Assistant to a Magistrate, or a Police Officer;" but it did not seem to provide for the case of persons apprehended by a Magistrate, Deputy Magistrate, or Assistant to a Magistrate, or a Police Officer. He therefore suggested amendments which made the Section run thus:—

"If any person be apprehended by a person not being a Magistrate or a Police Officer, he

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shall be delivered over as soon as possible to a Police Officer, and carried before a Magistrate; and whenever any person shall be apprehended by or taken before a Magistrate, such Magistrate shall forthwith report the case to the Government to which he is subject and shall cause the person brought before him to be discharged, or to be conveyed to one of the Presidency Towns, or to be detained pending the orders of such Government."

Agreed to.

Section XI was passed as it stood.

Section XII was passed after a verbal amendment.

Section XIII was passed as it stood.

Section XIV was passed after a trifling amendment.

Section XV provided as follows:—

"The Governor-General in Council, or the Executive Government of any Presidency or place, or any of the Chief Commissioners or Commissioners mentioned in Section VI of this Act, may by order prohibit any person or persons, or any class or classes of persons, not being a natural-born subject or subjects of Her Majesty, from residing or travelling in or passing through any part of the said Territories, or from passing from any part of India to another without a license, &c."

MR. PEACOCK said, certain persons within the meaning of the Charter Act were allowed to reside in India. He therefore proposed the insertion, after the words "natural-born subject or subjects of Her Majesty," of the words "within the meaning of s. 81, 3 and 4 William IV, c. 85," and the omission of the words "residing or."

The amendments were severally agreed to.

Sections XVI to XVIII were passed as they stood.

Section XIX provided that—

"Whoever shall wilfully give a false answer to any question which by this Act he is bound to answer, or shall make any false report, shall, upon conviction before a Magistrate, be liable to imprisonment for a period not exceeding two years, and shall be liable to a fine not exceeding one thousand Rupees."

MR. ELIOTT thought that the penalty should be as heavy as in the preceding Section, for the Master or Commander of a Ship or vessel neglecting to report, namely, two thousand Rupees.

MR. PEACOCK said, in the preceding Section the penalty was a fine only. In the Section under consideration, the penalty was fine and imprisonment, and was much higher.

The Section was then passed as it stood.

Section XX or the Interpretation Clause was passed after a verbal amendment, and with the insertion of the words "within the meaning of s. 81, 3 and 4 Wm. IV c. 85" after the words "a natural-born subject of Her Majesty."

Sections XXI and XXII were passed as they stood.

MR. CURRIE wished to introduce a new Section. There were Native States bordering on the North, East, and West of India, the subjects of which were engaged in constant traffic within the British Territories. It would embarrass that traffic if licenses from traders were required. Any person passing up the Grand Trunk Road would meet strings of camels from Caubul and the country west of the Indus. The Nepaulese brought their produce to Goruckpore, Chumparun, Sarun, and the neighbouring districts. It would be a poor return for the good offices of the Nepaulese Government to require the inhabitants of Nepaul trafficking in our territories to report themselves or to apply for a pass. He therefore thought that persons of this description should be exempted from the operation of the Bill. It might rest with the Government to extend it to Native States. But the rule should be as contained in the following Section which he proposed to introduce after Section XXII, namely,

"The foregoing provisions of this Act shall not extend to the Native subjects of any State bordering on the said Territories, unless the Governor-General of India in Council or the Executive Government of any Presidency or place, as regards their respective jurisdictions, shall by order extend the said provisions or any of them to the subjects of any such State, or to any class or individual of such subjects."

MR. PEACOCK said, he was very much in favor of the introduction of the proposed Clause. When the Bill was originally prepared, the Interpretation Clause gave a different definition of the word "Foreigners" than the Bill as it now stood. He thought the general rule should be that the subjects of Native States should not be exempted.

THE CHIEF JUSTICE would only suggest, as a matter of Police to those whom it concerned, that the persons professing to belong to the classes in

question would require to be carefully watched; and would remind the Council that Lieutenant Burton of the Bombay Army had recently visited Mecca and Medina disguised as a Caubulee undetected by the fanatical Mahomedans of those places.

MR. LEGEYT, adverting to the expression "Native States," thought that to exempt the inhabitants of Native Indian States from the operation of the Bill, and to leave it operative on other neighbouring Foreign States, such as the Portuguese territories of Goa, Demaun, and Diu, and the French territories in India, would be exceedingly invidious. He did not see at all why the inhabitants of Native Foreign States as a general rule should not come under the restrictions provided in the Bill. If the Executive Governments chose to do so, they could exempt them from these restrictions or any portion of them; and he thought that such exemptions should be the exception and not the rule.

MR. ELIOTT said, Government would find it necessary to extend the exceptions. He would arm the Government with the powers given by this Act, and vest them with a discretion.

MR. LEGEYT said, he would leave the Bill as it now stood, and give the Government the power of exempting Native States in common with others.

THE CHIEF JUSTICE was against the proposed Section. He thought that difficulties might arise with reference to Natives. It appeared to him that some of the trading people would require to be looked after. He would rather leave the power of granting exemption to the Executive Government. To grant it by law might create some difficulty with reference to existing Treaties.

MR. CURRIE said, as doubts had been taken as to the expediency of inserting the Clause proposed by him, he would not press it. He thought, however, that, in the cases referred to, exemption should be the rule and not the exception.

The Motion was then by leave withdrawn.

Section XXIII was the Exemption Clause.

After a trifling amendment made by Mr. Peacock—

THE CHIEF JUSTICE said, it might be useful to empower Government to exempt persons, not only temporarily or otherwise, but also wholly or partially. He accordingly moved an amendment to this effect.

Agreed to.

SIR ARTHUR BULLER thought that power should be given for revoking an exemption. He therefore moved the addition of words to that effect at the end of the Section.

Agreed to.

Section XXIV, and the Preamble and Title, were severally passed as they stood.

The Council having resumed its sitting, the Bill was reported.

PORT-DUES (GULF OF CAMBAY).

MR. LEGEYT moved that the Special Report of the Select Committee on the Bill "for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay" be adopted. If it were adopted, further proceedings on the Bill would be suspended until the receipt of the communication from the Bombay Government referred to in paragraph 4 of the Report.

Agreed to.

COTTON-FRAUDS (BOMBAY).

MR. LEGEYT moved that a communication received by him from the Government of Bombay on the subject of Cotton-Frauds, be printed.

Agreed to.

ARTICLES OF WAR (NATIVE ARMY).

MR. PEACOCK moved that the Council do resolve itself into a Committee on the Bill "to amend the Articles of War for the Native Army;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I was passed as it stood.

Section II was passed after a verbal amendment.

Sections III and IV were passed as they stood.

The Preamble was passed after a verbal amendment.

The Title was passed as it stood.

The Council having resumed its sitting, the Bill was reported.

MR. PEACOCK then moved that the Bill be now read a third time and passed.

Agreed to.

MR. PEACOCK moved that General Low be requested to carry the Bill to the Governor-General for his assent.

Agreed to.

PORT-DUES (CUTTACK).

MR. CURRIE moved that a communication received by him from the Government of Bengal be laid upon the table and referred to the Select Committee on the Bill "for the levy of Port-dues in certain Ports in the Province of Cuttack."

Agreed to.

The Council adjourned.

Saturday, November 28, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.
Hon. Major General J. Low,	E. Currie, Esq.
Hon. B. Peacock,	Hon. Sir A. W. Buller, and
D. Elliott, Esq.	H. B. Harington, Esq.

MR. HARINGTON took the oaths as a Member of the Council for the Lieutenant-Governorship of the North Western Provinces.

LUNATICS.

MR. CURRIE moved that the Bill "relating to Lunatic Asylums" be now read a second time.

The motion was carried, and the Bill read a second time.

MR. CURRIE moved that the Bill "to regulate proceedings in Lunacy in Her Majesty's Courts of Judicature" be now read a second time.

THE CHIEF JUSTICE said, he rose only to express his thanks to the Honorable Member for the pains he had taken with this part of the subject of Lunacy; and to say that, as far as he had yet been able to judge, the Bill generally had his concurrence. There was one point on which he had some doubt; but that would be better discussed in Committee; and he had no objection whatever to the second reading of the Bill.

The motion was carried, and the Bill read a second time.

MR CURRIE moved that the Bill "to make better provision for the care of the Estates of Lunatics not subject to the jurisdiction of Her Majesty's Courts of Judicature" be now read a second time.

The motion was carried, and the Bill read a second time.

FOREIGNERS.

The order of the day for the third reading of the Bill "to make further provision relating to Foreigners" being read—

MR. PEACOCK moved that the Bill be recommitted to a Committee of the whole Council for the purpose of considering a proposed amendment therein.

Agreed to.

The Bill was passed after a verbal amendment in Section XV on the motion of MR. PEACOCK, and was reported to the Council.

MR. PEACOCK then moved that the Bill be read a third time and passed.

The motion was carried, and the Bill read a third time.

GANJA (BOMBAY).

MR. LEGEYT moved that the Bill "relating to the sale of Ganja in the Presidency of Bombay" be now read a third time and passed.

The motion was carried, and the Bill read a third time.

FOREIGNERS.

MR. PEACOCK moved that General Low be requested to take the Bill "to make further provision relating to Foreigners" to the Governor-General for his assent.

Agreed to

GANJA (BOMBAY).

MR. LEGEYT moved that General Low be requested to take the Bill "relating to the sale of Ganja in the Presidency of Bombay" to the Governor-General for his assent.

Agreed to.

CIVIL PROCEDURE (N. W. P.).

MR. PEACOCK moved that Mr. Harington be added to the Select Committee on the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in the North-Western Provinces."

Agreed to.

CRIMINAL PROCEDURE (N. W. P.).

MR. PEACOCK moved that Mr. Harington be added to the Select Committee on the Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in the North-Western Provinces, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction."

Agreed to.

COMPULSORY LABOR (FORT ST. GEORGE).

MR CURRIE moved that Mr. Eliott be added to the Select Committee on the Bill "to make lawful compulsory labor for the prevention of mischief by inundation, and to provide for the enforcement of compulsory labor to certain works of irrigation in the Presidency of Fort St. George."

Agreed to.

MINORS (FORT ST. GEORGE).

MR. CURRIE moved that Mr. Eliott be added to the Select Committee on the Bill "to extend the provisions of Act XXI of 1855 in the Presidency of Fort St. George to Minors not subject to the superintendence of the Court of Wards."

Agreed to.

LIMITATION OF SUITS.

THE CHIEF JUSTICE moved that Mr. Harington be substituted for Mr. Peacock as a Member of the Select Committee on the Bill "to provide for the acquirement and extinction of rights by prescription, and for the limitation of suits." He was obliged to make the Motion in that form, in order to introduce Mr. Harington, whose assistance it was very desirable to have, into the Committee which was already full. His Honorable and learned friend, who had so many other demands upon his time, was willing to retire from the Committee; and Mr. Harington was willing to be substituted for him.

Agreed to.

MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYT moved that Mr. Eliott be added to the Select Committee on the Bill "for appointing Municipal Commissioners and for raising a Fund for Municipal purposes in the Town of Bombay."

Agreed to.

COTTON FRAUDS (BOMBAY).

MR. LEGEYT gave notice that he would on Saturday next move the first reading of a Bill for the better suppression of frauds in respect of Cotton in the Presidency of Bombay.

MERCHANT SEAMEN.

MR. CURRIE moved that the Bill "for the amendment of the law relating to Merchant Seamen" be referred to a Select Committee consisting of Mr. Eliott, Mr. LeGeyt, Sir Arthur Buller, and the Mover.

Agreed to.

LUNATICS.

MR. CURRIE moved that the Bill "relating to Lunatic Asylums" be referred to a Select Committee consisting of Mr. Eliott, Mr. LeGeyt, Sir Arthur Buller, Mr. Harington, and the Mover.

Agreed to

MR. CURRIE moved that the Bill "to regulate proceedings in Lunacy in Her Majesty's Courts of Judicature" be referred to a Select Committee consisting of the Chief Justice, Sir Arthur Buller, and the Mover.

Agreed to.

MR. CURRIE moved that the Bill "to make better provision for the care of the Estates of Lunatics not subject to the jurisdiction of Her Majesty's Courts of Judicature" be referred to a Select Committee consisting of Mr. Eliott, Mr. LeGeyt, Sir Arthur Buller, Mr. Harington, and the Mover.

Agreed to.

PORT-DUES (ADEN).

MR. LEGEYT moved that the Bill "for the levy of Port-dues in the Port of Aden" be referred to a Select Committee consisting of the Chief Justice, Mr. Eliott, Mr. Currie, and the Mover.

Agreed to.

The Council adjourned.

Saturday, December 5, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.
Hon. Major General J. Low,	E. Currie, Esq., and
Hon. B. Peacock,	H. B. Harington,
D. Eliott, Esq.	Esq.

The following Messages from the Governor-General were brought by General Low, and read:—

ARTICLES OF WAR (NATIVE ARMY.)

MESSAGE No. 119.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 21st Instant, entitled "A Bill to amend the Articles of War for the Native Army."

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 28th November 1857.

FOREIGNERS.

MESSAGE No. 120.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 28th Ultimo, entitled "A Bill to make further provision relating to Foreigners."

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 5th December 1857.

GANJA (BOMBAY).

MESSAGE No. 121.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 28th Ultimo, entitled "A Bill relating to the sale of Ganja in the Presidency of Bombay"

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 5th December 1857.

PORT DUES (CUTTACK).

MR. CURRIE presented the Report of the Select Committee on the Bill "for the levy of Port-dues in certain Ports in the Province of Cuttack."

COTTON-FRAUDS (BOMBAY.)

MR. LEGEYT moved that a Bill "for the suppression of frauds in the Cotton-Trade in the Presidency of Bombay" be now read a first time. The object of this Bill, he said, was to prevent the false packing and deterioration of Cotton in the Presidency of Bombay. The evils sought to be remedied by it were of very old standing; and so long ago as the year 1829, a Regulation, No. III of that year, was passed with the view of checking these frauds in the Mofussil Provinces of Bombay; and, again, in 1851, Act XV of that year was passed by the Legislative Council "for the better suppression of fraudulent practices in the Cotton Trade in Bombay," and had operation within the Islands of Bombay and Colaba. These two enactments, although they had been in force now for several years, had not by any means attained the object for which they were designed. Their inoperativeness, he might safely say, did not at all proceed from the offence being uncommon, or carried on with any degree of secrecy, but from the fact that, when the frauds were committed, the native seller and purchaser were generally parties to them, and there was consequently no one having a direct interest to bring the cases to notice, or to prosecute them when they were brought to notice. Hitherto, where any prosecution had been instituted, it had been instituted by Officers of Government.

From information which he had received from the Government of Bombay, he observed that there had never been a single conviction under Act XV of 1851, and but very few under Regulation III of 1829. A recent decision of the Bombay Sudder Adawlut had rendered it more difficult now than ever successfully to conduct a prosecution; for it had ruled that, to sustain a conviction under Regulation III of 1829, there must be proof of a sale of falsely-packed or deteriorated Cotton; and the Court had further laid down, in the same case, that there should be a complainant having an actual interest in the Cotton before the Cotton could be even examined. The Government of Bombay, in remarking upon this decision, said—

"The frauds which it is now sought to prevent, affect mostly the interests of third par-

ties whom the circumstances of the trade compel to place themselves in the hands of others. Unless these interests are efficiently protected, serious injury must accrue to the export trade in Cotton, which it is a most important national object to foster. The commercial interests of Great Britain, as well as of India, imperatively require that we should do all in our power to improve the character of Indian Cotton; and His Lordship in Council is persuaded that no measure will more certainly tend to this end than the prevention of the system of fraud which is maintained, with short-sighted indifference to ultimate consequences, by an unprincipled set of local traders intent only on immediate gain."

Among the suggestions forwarded by local Officers in the Mofussil of Bombay for the better prevention of these frauds, was one by the Magistrate of Broach, whose decision had been quashed by the decision of the Sudder Adawlut to which he (Mr. LeGeyt) had referred. That Officer proposed that the provision of Section IV of Act XV of 1851 should be extended to all places in which Regulation III of 1829 had relation That Section provided that "any person who, in the Island of Bombay or Colaba, shall knowingly and wilfully have in his possession any such mixed or adulterated Cotton as aforesaid, with a view to any fraudulent sale or disposition thereof, shall be deemed guilty of a misdemeanor." The Magistrate justly observed that, if this were the law in the Mofussil, "all persons would join the Government in putting down frauds in Cotton. No Native dealer," he proceeded, "or dullol, takes falsely-packed or deteriorated Cotton without knowing that it is so, as he would subject himself to punishment were it found in his possession."

The Bombay Government, in a subsequent part of the letter from which he had quoted, said—

"It must be borne in mind that it is not the object of the proposed legislation to put a stop to legitimate and fair trade in inferior and mixed Cotton for which there exists a demand at corresponding prices; but to prevent the fraudulent substitution of such Cotton for Cotton of superior value."

With this information before him, he had prepared a Bill which repealed Regulation III of 1829 and Act XV of 1851; and he had introduced provisions into it of similar import to those which existed in those enactments, with the addition of such provisions as had been approved of by the Government of Bombay as being calculated to ensure the object in view.

The Bill was read a first time.

PORT-DUES (MADRAS).

MR. ELIOTT moved that a Bill "for the levy of Port-dues and Fees at Ports within the Presidency of Fort St. George" be now read a first time.

Some time ago, he said, a Bill had been introduced by the Honorable Member for Bengal, at the instance of the Government of Fort St. George, for the levy of Port-dues and Fees at certain Ports within that Presidency, and to provide against the discharge of ballast in certain other Ports. Objections had been made to this Bill on the motion for the second reading, which had induced the Honorable Member to withdraw it; and, in communicating those objections to the Government of Fort St. George, he had suggested that two separate Bills should be substituted for the one withdrawn—the one to fix rates of Port-dues for the several Ports to be subject to the Harbour Act generally, the other to be applied to the smaller Ports to which it might be expedient to extend particular provisions of the Harbour Act.

The Honorable Member had particularly noticed that, while the Bill which had been withdrawn provided a uniform maximum rate for the levy of Port-dues at certain Ports, no data had been provided to shew what rates might be actually necessary at those Ports, remarking that, when the Harbour Act was passed, it was expressly stipulated that the rates to be fixed for each Port should be regulated according to its actual requirements—that is, according to the expenses now incurred, and the estimated cost of any improvements that might be projected for it.

The Government of Madras had since transmitted to the Clerk of the Council a communication from the Marine Board of that Presidency representing that the data requisite for fixing the Port-dues, the want of which had been complained of when the former Bill was before the Council, had previously been furnished to the Government of India. The Schedules containing the said data had lately been obtained from the Office of the Home Department of the Government of India, and had been printed. The

information furnished in these Schedules was not so detailed as it ought to have been; but as the period during which the collection of the present Port-dues was authorized by Act XXIV of 1857 would expire in little more than two months, it was not possible to obtain from Madras a more complete specification in time for the passing of a law to sanction the levy of Port-dues in future to have effect from the expiration of the said Act. He had, therefore, at once prepared a Bill with reference to the data afforded by the said Schedules and the above mentioned communication from the Marine Board, and begged leave now to submit it to the Council.

The present rate of Port-dues at the Port of Madras was three annas per ton, which yielded a revenue considerably exceeding the actual charges as stated in the Schedule. He thought that the maximum rate to be fixed by law ought not to exceed this rate, which he had therefore adopted instead of the rate of four annas proposed in the former Bill and still advocated by the Marine Board.

It was observed by the Marine Board that "should a Pier or Break-water or both be constructed, it will be necessary that the Port-due should be increased." It was obvious that the addition of one anna per ton would not be sufficient to meet the expense of any such work, which would certainly amount to many lakhs of Rupees. Whenever such a work was undertaken, it should be provided for by a special Act. There was no present occasion for raising the rate above three annas; and it appeared that no increase was contemplated.

At the out-Ports, the present rate was uniformly one anna per ton on square-rigged vessels, and half an anna on dhonies. For the most part, the Port-charges more or less exceeded the income derived from Port-dues; and in some of the Ports, particularly Cochin and Cocanada, improvements were contemplated or were in progress, which would require a considerable outlay. It was stated, however, that there was no intention at present to increase the rates even at those Ports, apparently from the apprehension that the imposition of an additional burden would check their growing prosperity. Still, it was proposed that, following the former Bill, a maximum rate of four annas per ton should be authorized for all the out-Ports as well as for Madras. Conceiving any such contingent provision to be inconsistent with the intention of Act XXII of 1855, he had not followed the former Bill in this respect. He proposed, however, that, on account of the improvements to be made at the Ports of Cochin and Cocanada, the maximum rate for the former should be fixed at two annas, and for the latter at three annas per ton, leaving it to the local Government to determine the rates to be actually levied within those limits at its discretion.

He observed that the actual charges of the Port of Tutacorin were four-fold of the income derived from the present Port-dues; and, it appearing to him to be expedient therefore to authorize the increase of the rate, he proposed that the maximum for this Port should be fixed at three annas. This would not bring up the income to equality with the charges, but the increase was probably as much as the trade would bear.

At all the other Ports, he proposed to fix the maximum at the present rate of one anna per ton.

He had excluded Paumben from the Schedule of Ports at which Port-dues were to be levied, as it was a Channel and not a Port; and, in point of fact, no Port-dues were levied there.

He had followed the Calcutta Act in making all vessels, except dhonies and country-coasting vessels, liable to the Port-due every time they entered any of the Ports to which the Bill applied, restricting the charge on dhonies &c. to once in sixty days. At present, in the Madras Presidency, no vessels were chargeable with Port-dues oftener than once in six months. He did not see any reason for a difference in this respect between the Madras Ports and Calcutta.

He had thought it advisable to adopt from the old Law for Madras a provision exempting vessels entering a Port, and leaving it within a limited time without breaking bulk, from payment of the full rate. He proposed that, if the vessel left the Port within forty-eight hours, the charge should be one-half only. At present, the charge was 2-5ths if the vessel left within forty-eight hours, and 7-10ths if it stayed more than forty-eight hours but less than four complete days.

The Bill was read a first time.

PORT-DUES (MOULMEIN, &c.)

MR. CURRIE moved that the Bill "for the levy of Port-dues in the Ports of Moulmein, Rangoon, Kyouk Phyoo, Akyab, and Chittagong" be now read a third time and passed. He said, after the Bill had passed through Committee, it had been republished, because the rates for two of the Ports, Moulmein and Akyab, had been considerably increased, and the Port of Kyouk Phyoo had been added. It had now been published more than two months, and no objection had been taken from any quarter to the rates fixed in Committee. He therefore moved that it be read a third time and passed.

The Motion was carried, and the Bill read a third time.

NAWAB OF SURAT.

MR. LEGEYT said, on the 17th of October last a Petition was presented to the Council from Meer Jaffer Ali Khan, Bahadoor, of Surat, praying for the passing of an Act to amend Act XVIII of 1848 ("for the administration of the Estate of the late Nawab of Surat, and to continue privileges to his family.") He had looked into such of the papers referred to in the Petition as he had been able to obtain access to; and it appeared to him desirable to make a call on the Government of Bombay for some further information regarding the allegations put forward by the Petitioner.

The object of the Petition was to get rid of Section II of Act XVIII of 1848, which runs as follows:—

"The Governor of Bombay in Council is empowered to act in the administration of the property, of whatever nature, left by the late Nawab of Surat, in regard to the settlement and payment of the debts and claims standing against the Estate of the said late Nawab at the time of his death, and to make distribution of the remaining property among his family; and no act of the said Governor of Bombay in Council in respect to the administration to and distribution of such property, from the date of the death of the said late Nawab, shall be liable to be questioned in any Court of Law or Equity."

The Government of Bombay proceeded shortly afterwards to give effect to the Act. The Petitioner considered the decisions respecting his claims a great grievance to himself, and appealed against them to Her Majesty in Council, being advised that the proceedings of the Government of Bombay in all matters connected with the Estate of the late Nawab were subject to appeal. The Privy Council, however, ruled that the decisions in question were not of a judicial character, and that no appeal from them could lie. The Petitioner stated that, upon this ruling, he sought redress in various ways in England, and, at last, resorted to his present course of petitioning the Council to amend Act XVIII of 1848. He concluded by saying—

"In consequence of the opinion so generally entertained that your Petitioner ought not to be deprived of his right to appeal, the Government of Bombay has considerately and wisely refrained from carrying into effect such of its decisions respecting the Nawab's estate as have been formally called in question by your Petitioner, and the property still remains undisposed of in their charge. The Honorable Court of Directors has now issued instructions to the Bombay Government to suspend the distribution of the property for the further period of a year, to enable your Petitioner to take what steps he may think requisite to obtain redress. As no indefeasible title to the property can have been acquired by any one whilst the proceedings of the Government have thus been kept in abeyance, your Honorable Council have the satisfaction of knowing that no injustice will now be done to others in affording to your Petitioner the redress to which he believes he is entitled, as made manifest by the facts above stated, and placed beyond question by the deliberate judgment of the House of Commons."

From the information he (Mr. Legeyt) had been able to obtain here, the fact appeared to be that the original draft of Act XVIII of 1848, which was submitted by the Sudder Dewanny Adawlut of Bombay to the Government, did place the decisions of the Government in matters connected with the estate of the Nawab of Surat on the same footing as their decisions in matters connected with the estates of the Sirdars of the Deccan; but he did not find any provision to that effect in any of the drafts forwarded by the Government of Bombay to the Legislative Council. The provision appeared to have been omitted by the Government of Bombay. Probably the Government had very good reasons for making the omission; but those reasons did not appear in any of the papers now here; and it would be satisfactory, before disposing of the Petition to which he had

referred, that the Council should make itself acquainted with them, in order that it might see whether further legislation on the subject was expedient or proper. He, therefore, moved that the Bombay Government be requested to furnish the Legislative Council with copies of all papers relating to the preparation and passing of Act XVIII of 1848.

Agreed to.

MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYT moved that a communication received by him from the Government of Bombay, relative to the proposed Town-duty on Timber, be laid upon the table and referred to the Select Committee on the Bill "for appointing Municipal Commissioners and for raising a fund for Municipal purposes in the town of Bombay."

Agreed to.

PORT-DUES (MOULMEIN, &c.)

MR. CURRIE moved that Mr. Peacock be requested to take the Bill "for the levy of Port-dues in the Ports of Moulmein, Rangoon, Kyouk Phyoo, Akyab, and Chittagong" to the Governor-General for his assent.

Agreed to.

RECOVERY OF RENT (BENGAL).

MR. CURRIE moved that Mr. Harington be added to the Select Committee on the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal."

Agreed to.

INDIAN PENAL CODE.

MR. PEACOCK moved that Mr. Harington be substituted for Mr. Grant as a Member of the Select Committee on "The Indian Penal Code."

Agreed to.

The Council adjourned.

Saturday, December 12, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.,
Hon. Major General J. Low,	E. Currie, Esq.,
Hon. B. Peacock,	Hon. Sir A. W. Buller and
D. Eliott, Esq.	H. B. Harington, Esq.

SALE OF LANDS (BENGAL).

THE CLERK presented to the Council a Petition from Womachurn Roy relative to the Bill "to improve the law relating to sales of land for arrears of Revenue in the Bengal Presidency."

MR. CURRIE moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

MUNICIPAL ASSESSMENT (SUBURBS OF CALCUTTA, AND HOWRAH).

THE CLERK also presented a Petition from Native Inhabitants of the Suburbs of Calcutta against the proposed levy of a carriage and horse-tax in those Suburbs.

MR. CURRIE moved that the above Petition be referred to the Select Committee on the Bill "for raising funds for making and repairing roads in the Suburbs of Calcutta and the Station of Howrah."

Agreed to.

COMPULSORY LABOR (MADRAS).

MR. ELIOTT presented the Report of the Select Committee on the Bill "to make lawful compulsory labor for the prevention of mischief by inundation, and to provide for the enforcement of customary labor to certain works of irrigation in the Presidency of Fort St. George."

OOTACAMUND SUBORDINATE CRIMINAL COURT.

MR. ELIOTT moved that a Bill "to extend Act XXV of 1855" (to empower the Session Judge of Coimbatore to hold Sessions at Ootacamund on the Neilgherry Hills) be now read a first time.

Act XXV of 1855, he said, contemplating the establishment at Ootacamund of a Subordinate Criminal Court constituted according to Regulation VIII of 1827 of the Code of Fort St. George, that was under the presidency of a Principal Sudder Ameen, provided for the Session Judge of Coimbatore holding Sessions at Ootacamund for the trial of persons charged with offences subject to his

jurisdiction on commitments made by such Court.

The Honorable the Court of Directors being of opinion that the Court at Ootacamund had better be presided over by an Officer of the class of Subordinate Judges under Regulation II of 1827, than by a Principal Sudder Ameen under Regulation VIII of 1827 of the Code, had directed an application to be made to the Legislative Council for such an amendment of Act XXV of 1855 as would make it operative on this alteration in the constitution of the Court; and he now submitted to the Council a Bill for that purpose, which was to the same effect as a draft which he had received from the Government of Madras, but different in form, inasmuch as the latter contemplated a new Act to be substituted for Act XXV of 1855, whereas it appeared to him to be necessary to extend its provisions.

The Bill was read a first time.

REGULATION OF PORTS (FORT ST. GEORGE).

MR. ELIOTT moved that a Bill "for the Regulation of certain Ports within the Presidency of Fort St. George" be now read a first time.

He said, at the instance of the Government of Madras, he submitted a Bill to provide for the preservation of the Ports in that Presidency which were declared under Act VI of 1844 to be Ports for the landing and shipment of merchandise, but which were not considerable enough to be made subject generally to the provisions of Act XXII of 1855.

By this Bill, the provisions of Sections XVI and XXIV of Act XXII of 1855 were made applicable to the Ports in question. By the former of these Sections, authority was given for the imposition of penalties on persons causing obstruction or impediment to the navigation of a Port, or causing any public nuisance affecting such navigation. By the latter, provision was made for the punishment in like manner of persons improperly discharging ballast in a Port so as to be detrimental to its navigation.

The Bill was read a first time.

PORT-DUES (FORT ST. GEORGE.)

MR. ELIOTT moved that the Bill "for the levy of Port-dues and fees at Ports within the Presidency of Fort St. George" be now read a second time.

The motion was agreed to, and the Bill read a second time accordingly.

PORT-DUES (CUTTACK).

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill "for the levy of Port-dues in certain Ports in the Province of Cuttack;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and was reported.

PORT-DUES (FORT ST. GEORGE).

MR. ELIOTT moved that the Bill "for the levy of Port-dues and fees at Ports within the Presidency of Fort St. George" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Currie, and the Mover.

Agreed to.

MR. ELIOTT moved that the Standing Orders be suspended to enable the Select Committee to present their Report on or after the 17th of January next.

THE CHIEF JUSTICE seconded the motion, which was then agreed to.

SALE OF LANDS (BENGAL).

MR. CURRIE moved that Mr. Harington be added to the Select Committee on the Bill "to improve the law relating to sales of land for arrears of Revenue in the Bengal Presidency."

Agreed to.

NOTICE OF MOTION.

MR. LEGEYT gave notice that he would, on Saturday next, move the second reading of the Bill "for the suppression of frauds in the Cotton-Trade in the Presidency of Bombay."

The Council adjourned.

Saturday, December 19, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	E. Currie, Esq.,
Hon. B. Peacock,	Hon. Sir A. W. Buller
D. Eliott, Esq.,	and
P. W. LeGeyt, Esq.,	H. B. Harington, Esq.

CRIMINAL PROCEDURE (BENGAL).

THE CLERK presented to the Council a Petition from certain Hindoo Inhabitants of Bengal assembled at a public Meeting in the Town Hall at Calcutta.

The Petitioners prayed—

"that so much of a project of law now before your Honorable Council as provides that no class of Her Majesty's subjects in India shall, by reason of place of birth, or race, or descent, be exempt from the jurisdiction of the Mofussil Courts, be passed into law; and that the principle thereof be carried out in its integrity, without reference to the official position of any class or individual of the community."

The Petition was accompanied by a Letter from Rajah Radakhant Bahadoor, stating that—

"In consequence of the disturbances in the North-Western Provinces, it had been considered expedient to postpone the submission of the Petition. But as the Court of Directors have referred to the subject in a recent Despatch, I have been requested no longer to delay the presentation."

MR. PEACOCK moved that the above Petition be printed.

Agreed to.

THE CLERK also presented a Petition from proprietors of licensed taverns &c. in Calcutta praying that all boarding or lodging-house keepers and keepers of houses of public resort and entertainment for seamen and soldiers in the town, whether licensed retail-vendors of spirits or otherwise, be required to take out the same boarding or lodging-house license, and to submit to the same conditions, as themselves; it being left optional to take or not a license from the Collector of Calcutta for the sale of spirits.

MR. CURRIE moved that the above Petition be printed.

Agreed to.

CRIMINAL PROCEDURE.

THE CLERK reported to the Council that he had received, by transfer from the Under-Secretary to the Government of India in the Home Department, for consideration in connection with the Law of Criminal Procedure, a communication from the Secretary to the Government of the Central Provinces relative to the case of one Brown who was sentenced by the Superintendent of Police at Cawnpore to imprisonment on a charge of theft, but who was subsequently released on the alleged ground of his being a European British subject.

MR. HARINGTON moved that the above communication be referred to the Select Committees on the Bills regarding Criminal Procedure.

Agreed to.

MR. PEACOCK moved that the Petition of the Hindoo Inhabitants of Bengal this day presented be referred to the Select Committees on the same Bills.

Agreed to.

PORT-DUES (MOULMEIN, &c.)

The following Message from the Governor General was brought by Mr. Peacock and read:—

MESSAGE No. 122.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 5th instant, entitled "A Bill for the levy of Port-dues in the Ports of Moulmein, Rangoon, Kyouk Phyoo, Akyab, and Chittagong."

By order of the Right Honorable the Governor General.

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 14th Dec. 1857.

MUNICIPAL ASSESSMENT (SUBURBS OF CALCUTTA, AND HOWRAH).

MR. CURRIE presented the Report of the Select Committee on the Bill "for raising funds for making and repairing roads in the Suburbs of Calcutta and the Station of Howrah."

COTTON-FRAUDS (BOMBAY).

MR. LEGEYT postponed the motion (of which he had given notice for this day) for the second reading of the Bill "for the suppression of Frauds in the Cotton-trade in the Presidency of Bombay."

OOTACAMUND SUBORDINATE CRIMINAL COURT.

MR. ELIOTT moved that the Bill "to extend Act XXV of 1855" (to empower the Session Judge of Coimbatore to hold Sessions at Ootacamund on the Neilgherry Hills) be now read a second time.

The motion was agreed to, and the Bill was read a second time.

REGULATION OF PORTS (FORT ST. GEORGE.)

MR. ELIOTT moved that the Bill "for the regulation of certain Ports within the Presidency of Fort St. George" be now read a second time.

The motion was agreed to, and the Bill was read a second time.

COMPULSORY LABOR (MADRAS.)

MR. ELIOTT moved that the Council resolve itself into a Committee upon the Bill "to make lawful compulsory labor for the prevention of mischief by inundation, and to provide for the enforcement of customary labor to certain works of irrigation in the Presidency of Fort St. George;" and that the Committee be instructed to consider it in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to IV were passed as they stood.

Section V empowered Heads of Villages to call upon the Inhabitants for the supply of "cocoa-nut trees" and certain other materials, "and to seize such articles wherever they may be found, giving receipts for them in writing; such supplies shall be paid for from the public Treasury at the highest prices for which such articles are sold in the neighborhood."

MR. PEACOCK said, trees other than cocoa-nut trees might be required to be taken. He would suggest the omission of the word "cocoa-nut."

The word was, on MR. ELIOTT's motion, omitted

MR. PEACOCK said, he would call attention to the part of the Section which gave power to "seize" materials required. He observed that that word had been substituted in Select Committee for the word "take." Was it intended to give power under that word to cut down trees and to enter private grounds or plantations for that purpose, paying only the market-value of the timber? If it was, he did not think that such a power ought to be given. He thought that the Bill might give a general power to cut down any trees, but that it should provide, with regard to private estates, that full compensation should be made for the damage which might arise in consequence.

MR. ELIOTT replied, he presumed that the intention was to give the power of cutting down trees on private plantations.

MR. PEACOCK said, then, not only the value of the trees or timber, but compensation for the injury done to the estate, ought to be given. If trees were taken for public works, they should be taken on the same principle as that on which land was taken for a similar purpose; the principle of making full compensation for any damage sustained was the correct one. The Section, as it stood, provided for the payment of only the market price of the materials taken; but the cutting down of trees might injure an estate to an extent considerably beyond the mere market-value of the timber. It appeared to him that the Section should be so amended as to provide for compensation in such cases.

After some conversation, amendments were inserted on the motion of MR. PEACOCK, which made the part of the Section to which he referred, run thus—

"And to seize, and, if necessary, to cut down such articles wherever they may be found, giving receipts for them in writing; such supplies shall be paid for from the public Treasury at the highest prices for which such articles are sold in the neighborhood. And in case damage be sustained by any person in consequence of the cutting down of any such article, compensation shall be made for such damage; the amount of which compensation shall, in case of dispute, be determinable in the same manner as amounts payable under Section VI"

The Section, after verbal amendments in a subsequent part, was passed.

Section VI, and the Preamble and Title, were passed as they stood.

The Council having resumed its sitting, the Bill was reported.

OOTACAMUND SUBORDINATE CRIMINAL COURT.

MR. ELIOTT moved that the Bill "to extend Act XXV of 1855" (to empower the Session Judge of Coimbatore to hold Sessions at Ootacamund on the Neilgherry Hills) be referred to a Select Committee consisting of Mr. Currie, Mr. Harington, and the Mover.

Agreed to.

REGULATION OF PORTS (FORT ST. GEORGE.)

MR. ELIOTT moved that the Bill "for the regulation of certain Ports within the Presidency of Fort St. George" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Currie, and the Mover.

Agreed to.

The Council then adjourned, on the motion of the Chief Justice, till this day fortnight.

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